TRANSCRIPT OF RECORD.

Supreme Court of the United States

OCTOBER TERM, [redacted] 1926

No. [redacted]287

CHRYSLER SALES CORPORATION, APPELLANT,

vs.

W. STANLEY SMITH, AS COMMISSIONER OF INSURANCE OF THE STATE OF WISCONSIN

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WISCONSIN

FILED FEBRUARY 1, 1926

(31,661)

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SUPREME COURT OF THE UNITED STATES

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No. 938

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INDEX

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 23, 1926

[fols. 1 & 2] [Caption omitted]

[fols. 3 & 3½] **IN UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WISCONSIN**

In Equity

Chrysler Sales Corporation, Plaintiff,

vs.

W. Stanley Smith, as Commissioner of Insurance of State of Wisconsin, Defendant

Petition for Appeal and Order Allowing Same—Filed December 15, 1925

Chrysler Sales Corporation, plaintiff in above entitled action, in which plaintiff's application for temporary injunction was heard in accordance with the provisions of Section 266 Judicial Code and was determined adversely to plaintiff, considering itself aggrieved by the order and decree of the above named court against it, entered on the 18th day of November, 1925 denying the application for an interlocutory injunction in said cause, does hereby appeal from said order and decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors which is filed herewith and prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said order and decree was made, duly authenticated, be sent to the Supreme Court under the rules of said Court in such case made and provided.

Dated this 3rd day of December, 1925.

Ralph W. Jackman, Harold M. Wilkie, Oscar T. Toebaas, Attorneys for said Petitioner.

The foregoing appeal is allowed.

Dated December 4, 1925.

Evan A. Evans, Circuit Judge. F. A. Geiger, District Judge. C. Z. Luse, District Judge.

Service of due notice of within Petition for Appeal, allowance of same and appeal admitted this December 14th, 1925.

Herman L. Ekern, T. L. McIntosh, Attorneys for Defendant.

[File endorsement omitted.]

[fols. 4 & 5] Bond on appeal for $500.00, approved and filed December 15, 1925, omitted in printing.

[fol. 6] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL AND INJUNCTION PENDING APPEAL—Filed December 15, 1925

Chrysler Sales Corporation, plaintiff above named having filed its petition for an appeal herein and therewith its assignment of errors, now on motion of Ralph W. Jackman, Harold M. Wilkie and Oscar T. Toebaas, attorneys and solicitors for plaintiff, in term time and at the same term of the order and decree below mentioned, it is ordered that the appeal of said plaintiff, Chrysler Sales Corporation, from the interlocutory order and decree of this court heretofore filed and entered herein on the 18th day of November, 1925 be and it hereby is allowed, as prayed for, the amount of the appeal bond on said appeal being hereby fixed at the sum of Five Hundred Dollars with surety to be approved by the court or judge thereof or clerk thereof.

And it now appearing that the appellant has executed its appeal bond in the said sum of Five Hundred Dollars with American Surety Company as surety thereon and has presented the same for approval, said bond and surety are now hereby approved.

And it further appearing to the court that it is proper that an injunctional order be made to be effective pending [fol. 7] said appeal to the United States Supreme Court and it appearing that the hearing and determination of said

appeal and of similar appeal in case of Palmetto Fire Insurance Company vs. Conn, Insurance Commissioner of Ohio from United States District Court for Southern District of Ohio to United States Supreme Court and appeal in case of Palmetto Fire Insurance vs. Beha, Superintendent of Insurance of State of New York, inasmuch as they involve related questions arising out of the same contract of insurance and acts pursuant thereto, should be in view of the important public interests involved accellerated as much as possible and if possible be argued and determined together in the United States Supreme Court at the earliest possible time and it appearing that the State of Wisconsin and the public in the State of Wisconsin may be protected by proper bond pending the hearing and determination of the present appeal, now, therefore,

It is ordered that pending the hearing and determination of this appeal the defendant W. Stanley Smith, his deputies and agents and persons acting under him or at his direction be and they are restrained from interfering with the operation of the contract of Insurance between Chrysler Sales Corporation and Palmetto Fire Insurance Company and the sales of cars purchasers of which are insured under or pursuant to said contract and from prosecuting or attempting to prosecute or to cause the prosecution of any dealers in or distributors of Chrysler cars in Wisconsin by virtue of the facts, acts or transactions as set out in the complaint herein, but this order is expressly conditioned on the following and in event of failure to comply with any or all of these conditions this injunctional order shall be void.

(1) Within twenty (20) days from the date hereof the Palmetto Fire Insurance Company shall in writing filed with [fol. 8] the Commissioner of Insurance of the State of Wisconsin duly name and appoint an attorney-in-fact residing in Wisconsin on whom may be made the service of any process in any action against the Palmetto Fire Insurance Company by the State of Wisconsin in any action to collect license fees or taxes claimed by the State of Wisconsin to be due from the Palmetto Fire Insurance Company by virtue of any insurance by said company in favor of any resident of Wisconsin on any Chrysler car sold in Wisconsin between July 1, 1925 and the date of the final determination of this appeal by the Supreme Court of the United States, and on whom may be made service in any action by any resident

of Wisconsin in any action to recover on or by reason of any alleged claim against the Palmetto Fire Insurance Company under any policy or certificate of said company covering or relating to any Chrysler car sold in Wisconsin between July 1, 1925 and the final determination of this appeal, said appointment however to be without prejudice to and without any waiver of the claim of said Palmetto Fire Insurance Company that it is not and has not been transacting any business in the State of Wisconsin and has no agents therein and without waiver of and without prejudice to any claim or question involved in this litigation. Said appointment shall not be revocable pending the determination of this appeal but may thereafter be revoked if the order appealed from is reversed. Such appointment is at the direction of this court for the purpose of indemnity and security pending this appeal and shall not be deemed to constitute the transaction of any business in Wisconsin. In event of Palmetto Fire Insurance Company becoming licensed to do business in Wisconsin said appointment may be terminated without prejudice to any service made on such attorney-in-fact prior to such termination.

[fol. 9] (2) The above injunctional order shall not be effective until bond in the penal sum of Fifteen thousand Dollars to be approved as to form and surety by the judge of this court shall be filed herein conditioned as follows:

(a) That the Palmetto Fire Insurance Company shall promptly pay all claims in favor of any residents of the State of Wisconsin arising out of any insurance contract executed by Palmetto Fire Insurance Company relating to any Chrysler automobile sold in Wisconsin at retail between July 1, 1925 and the final determination of this appeal and that in event of failure of Palmetto Fire Insurance Company to pay any such claim on demand in accordance with its contractual obligation the surety may be sued in Wisconsin without joining the Palmetto Fire Insurance Company.

(b) That the Palmetto Fire Insurance Company shall promptly pay to the State of Wisconsin any license fees or taxes, and any penalty for non-payment thereof if any, for which it may be or become liable to the State of Wisconsin by virtue of insurance on Chrysler cars sold at retail in

Wisconsin between July 1, 1925 and the final determination of this appeal, and that in event of failure of Palmetto Fire Insurance Company to pay any such claim or demand the surety may be sued in Wisconsin without joining the Palmetto Fire Insurance Company.

(c) In the event of reversal of order appealed from said bond shall be void except as to actions already commenced against the surety of Palmetto Fire Insurance Company.

(d) In the event of final decree in this action in favor of Plaintiff or in event of decision in favor of plaintiff on appeal from such decree this bond shall be void except as to actions already commenced against surety or Palmetto Fire Insurance Company.

(e) In the event of the Palmetto Fire Insurance Com-
[fol. 10] pany becoming duly licensed to do business in Wisconsin this bond shall be void except as to actions already commenced against the surety, or Palmetto Fire Insurance Company.

(3) The above injunctional order shall cease and terminate if within ninety (90) days from date hereof the records on all three appeals above referred to shall not have been filed in the Supreme Court of the United States, and if appellant herein and Palmetto Fire Insurance Company shall not use all possible diligence to have all said cases advanced for argument at earliest possible time. In case the filing of the record in the New York case above referred to should be delayed through no fault of the attorneys for appellant herein or of attorneys for Palmetto Fire Insurance Company, this provision is without prejudice to application to the Supreme Court or justice thereof to continue this order. The giving of such bond is solely for purposes of security and indemnity pending said appeal and shall be without prejudice to the claim of said Palmetto Fire Insurance Company that it is not and has not been transacting business in Wisconsin, and is not and has not maintained or employed any agents in Wisconsin, and execution and filing of said bond shall not be deemed doing business in Wisconsin.

Dated December 4, 1925.

Evan A. Evans, Circuit Judge. F. A. Geiger, District Judge. C. Z. Luse, District Judge.

[fols. 11 & 12] Bond on injunction for $15,000, approved and filed December 15, 1925, omitted in printing.

[fols. 13 & 13½] Due service of within order and bonds and notice thereof admitted December 14, 1925.

Herman L. Ekern, T. L. McIntosh, Attorneys for Defendants.

Due service of the within admitted this 14th day of December, 1925.

W. Stanley Smith, Commissioner of Insurance, State of Wisconsin.

[File endorsement omitted.]

[fols. 14-16½] Præcipe for Transcript of Record, with Proof of Service, omitted in printing.

[fol. 17] In United States District Court

[Title omitted]

Bill of Complaint—Filed August 3, 1925

To the Honorable the Judge of the District Court for the Western District of Wisconsin:

The plaintiff above named for its bill of complaint herein respectfully shows to this Honorable Court:

(1) Plaintiff, Chrysler Sales Corporation, is a corporation duly organized and existing under and by virtue of the laws of the State of Michigan, and its principal office and place of business is located in the City of Highland Park, County of Wayne and State of Michigan; and said corporation is a citizen of said State of Michigan.

(2) Defendant, W. Stanley Smith is the duly appointed, qualified and acting Commissioner of Insurance of the State of Wisconsin, and is a citizen and resident of the State of Wisconsin, and of the Western District of Wisconsin.

(3) The ground upon which the jurisdiction of this Court depends are that the plaintiff is a citizen of the State of

Michigan, and the defendant is a citizen of the State of Wisconsin; and that the action arises under the constitution and laws of the United States.

[fol. 18] (4) The matter in controversy exceeds, exclusive of interest and costs the sum or value of Three Thousand Dollars ($3,000).

(5) Plaintiff is engaged in the business of buying from Chrysler Corporation, a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, and having its principal factories in the State of Michigan, and other factories in the states of Ohio and Indiana, all of the automobiles and parts manufactured by Chrysler Corporation, and selling the same at wholesale to distributors and dealers in the United States, Canada, Mexico and other countries in all parts of the world. The automobiles manufactured by said Chrysler Corporation and so sold by plaintiff are known as Chrysler cars, enjoy a favorable reputation with the public and have been and are being purchased by the public in rapidly increasing numbers. At present more than three thousand (3,000) dealers in the United States are selling Chrysler cars. The selection of distributors and dealers and the establishing and maintaining a large sales organization is difficult and expensive. For this purpose plaintiff has expended large sums of money, and maintains a staff of more than two hundred persons. Success in the business of making and selling automobiles depends largely on the selection and retention of distributors and dealers who are the customers who buy cars from the plaintiff. In the State of Wisconsin there are more than one hundred-thirty (130) distributors and dealers who are buying Chrysler cars and selling them to the public. Plaintiff has acquired and built up a valuable business with said customers which is a very valuable property right and is dependent on the retention of said customers and on the retention of the good will of [fol. 19] said customers and on giving satisfaction to the buying public. Sales of Chrysler cars to Wisconsin customers by plaintiff during the first half of 1925 exceeded Five Hundred Thousand Dollars ($500,000).

6. More than eighty per cent (80%) of automobiles of all makes sold to the American public are sold under plans

whereby the purchasers at retail pay only part of the purchase price at the time of taking delivery of the car and are given credit for the balance which is usually made payable in instalments. Ordinarily distributors and dealers have not sufficient capital to enable them to hold themselves the evidences of the unpaid balances due upon the automobiles thus sold on credit. It is the common practice for the distributors and dealers before selling cars on time to assure themselves of the services of a bank or finance company which agrees to purchase from them or to discount for them the notes, or other evidences of the balances due. The banks or finance companies rendering such services are obliged to maintain organizations to collect the payments when they are due and to watch that the cars are not improperly disposed of before they are paid for. They always require that insurance against the perils of fire and theft be effected in respect to the cars which they finance. In order to cover the expenses of collecting tthe instalments and of guarding against the making away with cars before full payment of the instalments the finance companies have made substantial charges These charges together with the cost of insurance and the interest on the unpaid balance of the purchase price, have always been paid by the retail purchasers of automobiles not been uniform and have been generally high. The placing of insurance has been largely [fol. 20] controlled by finance companies and the insurance business has been rapidly getting away from local insurance agents. Frequently purchasers of cars of many makes have paid excessive finance charges. This has increased the ultimate price paid by the consumer. In many instances local dealers have become connected with finance companies and have shared in profits made by such companies. Plaintiff as an active competitor in the automobile field saw that it would be a great advantage to buyers of Chrysler cars if arrangements could be made by the plaintiff to secure a uniform and moderate financing charge on all Chrysler cars. In order to accomplish this purpose it was necessary to provide for uniform insurance protection on all Chrysler cars. Plaintiff found that it was in a position to secure such insurance at moderate cost by an open contract or policy of insurance made and to be performed in Michigan, covering every Chrysler car against fire and theft for one year after date of purchase at retail for an

amount not to exceed the factory list price. Such insurance could be obtained at low cost because of the unusually low loss ratio on Chrysler cars throughout the United States, and because of the unusually low acquisition cost to the insurance company of writing such a policy. By such a policy automatic protection for every retail buyer of a Chrysler car, and for any other parties having an interest therein or lien thereon could be provided. Uniform insurance being thus arranged, a moderate and uniform financing charge could be obtained available for all sales of Chrysler cars on the instalment plan. Thereby the value of the Chrysler product to the ultimate buyer would be increased and a real saving made. It is estimated that this saving to the retail buyers of Chrysler cars will amount to a sum between Three Millions and Five Millions of dollars annually

[fol. 21] (7) Therefore on or about the 16th day of June, 1925, plaintiff and Palmetto Fire Insurance Company, an insurance corporation duly organized and existing under and by virtue of the laws of the State of South Carolina, with its principal office in Sumter, in said state, and duly authorized and licensed to conduct and transact business of writing direct fire and theft insurance in the State of Michigan, and maintaining a duly licensed general agency in the State of Michigan but not licensed to do business in the State of Wisconsin, and not doing any business or maintaining any agency therein, duly executed in the State of Michigan a contract or policy of insurance made and to be performed in the state of Michigan, wherein and whereby said Palmetto Fire Insurance Company undertook to insure and did insure all Chrysler automobiles sold in the United States at retail during the term of the policy against fire and theft for one year from the date of such sale, said insurance being granted under and pursuant to the terms and conditions of said contract or policy of insurance A copy of said policy is attached hereto, marked Exhibit "A" and made a part of this bill.

(8) Said contract or policy is what is known as an open policy. Its term is for one year from July 1, 1925, covering against loss by fire or theft all Chrysler cars sold in the United States during the policy year for the full factory

list price f. o. b. Detroit, for a term of one year from the date of sale to the retail purchaser. Under the terms of said contract or policy insurer is to issue a certificate in the name of plaintiff for the account of whom it may concern whenever a car is reported sold at retail. Said policy expressly provides, however, that omission to report the sale of a car or to issue a certificate in respect thereof shall not prevent the retail buyer of the car [fol. 22] and others interested from being protected under said policy. Only the plaintiff pays, or is liable to pay to said Palmetto Fire Insurance Company the agreed premium on said policy, and said premium is paid in the State of Michigan, and said policy is kept in the State of Michigan. Certificates are mailed by the Insurance Company from Michigan to the retail purchasers of said cars as a memorandum of the coverage afforded by said open policy, with counterparts to others known to have an interest in the respective cars.

(9) Plaintiff having entered into said contract or policy thereupon obtained and made available to retail purchasers of Chrysler cars a reduced uniform finance rate for time purchases, to-wit, eight per cent of the unpaid balance and announced the same to the public. Plaintiff expended large sums in advertising said plan to the public. When retail sale of a Chrysler car is made, whether for cash or on time, the purchaser and other parties interested are protected by the said Michigan contract made between plaintiff and said Palmetto Fire Insurance Company. Whether said car is sold for cash or on time, the price is the same, except for said charge of eight per cent upon the unpaid balance, if the car is sold on time. No purchaser may obtain his car at a less price whether or not he desires the protection of such insurance. The insurance comes into effect under the Michigan contract made by plaintiff with said Palmetto Fire Insurance Company, and the dealer or distributor can do nothing to prevent said insurance so coming into effect. For the protection of cash purchasers who desire other insurance than that provided by said contract or policy, the policy provides that if such purchaser takes other insurance, this insurance shall be merely excess insurance.

(10) The distributors of and dealers in Chrysler cars are in no way agents of the plaintiff. The course of the business is as follows: Plaintiff having from time to time fixed [fol. 23] the list price of its cars, sells them to its distributors for a cash price computed as follows: list price less a given discount, plus war tax and certain delivery charges. Freight is paid by the distributor. From time to time as occasion may have required changes have been made in amount of list price, discount, or delivery charges which have also been known as handling charges or unloading charges. In computing the discount there is not included either the war tax, freight or the delivery charge. On July 1, 1925 additions were made to the delivery charge on all models of Chrysler cars. The distributor sells to the dealer, on the same basis as the distributor has bought, but less a smaller discount on list price. The dealer in turn sells to the retail purchaser at a price equal to the list price plus freight, war tax, and delivery charge. The retail dealer reports to plaintiff the name of the purchaser, date of sale, motor number, style, etc., on retail sales made. Plaintiff notifies the agent in Detroit, Michigan, of said insurance company who mails the certificate hereinbefore referred to from his office in Detroit to the purchaser and counterparts to others who to his knowledge may have an interest in the car.

(11) No dealer or distributor takes any part in writing or placing, or in the payment for the insurance under said Michigan contract. He neither solicits nor receives nor transmits any application for insurance. No arrangement that he can make with the retail purchaser can change the protection afforded by the policy or prevent it from taking effect. There is no application which the insurer can accept or reject. Neither does the distributor or dealer solicit, demand, receive or transmit any premium. He must pay for each car on receipt of same the full price as above set out He can get back no part of said purchase price which he has paid for the car. What he receives from the [fol. 24] retail purchaser upon the sale of a car is his to do as he pleases. It is the proceeds of his own property for which he has alrady paid. No part of it is he bound to transmit to anybody as a premium for insurance or in any other guise. No dealer or distributor acts in any manner

in behalf of or as agent of said Palmetto Fire Insurance Company. Neither the distributor nor the dealer receives any commission or other compensation in any form on or by virtue of the insurance protection afforded to the retail purchaser by said Michigan contract.

(12) Chrysler cars are now being sold in large numbers in Wisconsin and the retail purchasers thereof and other parties interested in said cars wherever said purchasers or parties may reside and wherever in the United States, Canada or Mexico said cars may be taken or kept are protected by said insurance policy. Defendant claiming to act as Insurance Commissioner of the State of Wisconsin has ruled and announced to the public that the sale of Chrysler cars, pursuant to the plan hereinbefore described, wherein and whereby the purchaser becomes protected by the Michigan insurance contract as above stated is contrary to the laws of the State of Wisconsin, and that plaintiff and every Chrysler distributor or dealer selling Chrysler cars in Wisconsin is violating the criminal and civil laws of the said state, including among others the following statutes; Sections 4575s, 209.04; 209.05; 203.08; 201.44, Wisconsin Statutes, 1923 and other statutes not specified by defendant. Defendant has threatened and is now threatening to immediately procure the arrest and conviction of every Chrysler distributor or dealer selling in Wisconsin any Chrysler car the purchaser of which is or may be protected under said insurance contract made in Michigan between plaintiff and Palmetto Fire Insurance Company. [fol. 25] Defendant has sent out and is giving out and publishing letters and communications stating that plaintiff, said dealers and distributors and said Palmetto Fire Insurance Company are violating the law of Wisconsin by virtue of sales of cars as hereinbefore alleged. As a result many distributors and dealers have been and are being approached by those receiving said communications from defendant and threatened with legal proceedings criminal and civil if they do not stop selling cars where the purchaser is protected by insurance as above indicated. By and as the result of said threats and communications published by defendant, dealers, distributors and prospective retail buyers of Chrysler cars in Wisconsin are being harassed and intimidated and brought into a state of uncertainty seriously

injurious to plaintiff's business with persons in Wisconsin and in the sale of its product in said state. Unless relief by temporary restraining order is immediately granted to plaintiff against said threats and threatened acts of defendant plaintiff's business with parties in Wisconsin will be destroyed or irreparably damaged and immediate and irreparable loss and damage will result to plaintiff before the matter can be heard on notice. Unless plaintiff is further granted temporary injunction against said threats and acts and threatened acts pending this action and until final decree herein, plaintiff will suffer immediate and irreparable property loss and damage before the merits of this action can de determined The injuries done by said acts and threats of defendant are not and will not be compensable by damages. The action threatened by defendant will result in multiplicity of prosecutions which will irreparably damage and injure the sale of Chrysler cars in Wisconsin, and injure the good will of plaintiff and the value of plaintiff's business with persons in Wisconsin, and for such damage and injury damages canot be ascertained. Plaintiff has no adequate remedy at law.

(13) All said acts and threats of defendant are unlawful, [fol. 26] and as plaintiff is informed and believes, without sanction or support in the laws of the State of Wisconsin under which he assumes to act. Neither the plaintiff nor any dealer or distributor of Chrysler cars in Wisconsin in violating or threatens to violate any law of the State of Wisconsin all of which appears from the facts hereinbefore set forth, and the laws of the State of Wisconsin of which this court will take judicial notice. The Statutes of Wisconsin relied on by defendant, properly construed have no application to the acts of plaintiff and of distributors of and dealers in Chrysler cars in Wisconsin as hereinbefore set forth

(14) If and to the extent that the laws of the State of Wisconsin purport or may be construed to prohibit distributors of and dealers in Chrysler cars in Wisconsin from making sales in the manner hereinbefore set forth in Wisconsin of automobiles the retail purchasers of which shall be protected by said contract made in Michigan, or purport or may be construed to subject said dealers and distributors to criminal prosecution and punishment or to forfeitures

by reason of sale so made by them, or purport or may be construed to invalidate or otherwise apply to said insurance contract made by plaintiff in Michigan with Palmetto Fire Insurance Company, then to that extent said state statutes are void as violating and as contrary to the constitution of the United States and amendments thereto and particularly the Fourteenth Amendment thereof by reason of depriving the plaintiff and customers of plaintiff, (i. e. distributors and dealers in Wisconsin) of property without due process of law, impairing the freedom of contract guaranteed by the Federal Constitution and denying to the plaintiff and said distributors of and dealers in Chrysler cars the equal protection of the laws, and as attempting to regulate, prohibit and burden the making and performance of a contract lawfully made and to be performed outside the limits of the State of Wisconsin. For the same reason, the acts and rulings of defendant as Commissioner of Insurance of the State of Wisconsin as hereinbefore alleged are likewise a violation [fol. 27] of the Constitution of the United States.

(15) For as much therefore as plaintiff is without remedy in the premises except in a court of equity and to the end that plaintiff may obtain from this Honorable Court the relief to which plaintiff is by right and equity entitled, plaintiff respectfully prays that the above named defendant be directed to full true and perfect answer make to this bill of complaint but not under oath, answer under oath being hereby expressly waived and that defendant, and his successors in office, and his deputies, agents and employes and all persons acting for him be permanently restrained and enjoined from bringing or causing to be brought or threatening to bring or to cause to be brought any prosecutions or any actions or proceedings for the recovery of penalties or forfeitures or any civil actions or proceedings against the plaintiff or against the distributors of or dealers in Chrysler cars in Wisconsin based on or purporting to be based on or by reason of said contract of insurance between plaintiff and Palmetto Fire Insurance Company or based on or purporting to be based on or by reason of any rights existing or arising in favor of residents of Wisconsin or in respect to property situated in Wisconsin by reason of the existence of said contract of insurance or the performance

thereof or the sale of Chrysler cars in Wisconsin, or based on or purporting to be based on or by reason of any of the acts done or to be done or business transacted or to be transacted by plaintiff or by any distributor of or dealer in Chrysler cars in Wisconsin in the course of its or their business as more particularly described in this bill of complaint and from interfering in any other manner with its or their said business as aforesaid, and restrained and enjoined from issuing, declaring or publishing any statement, official or otherwise, that plaintiff or any of said distributors or dealers is violating any law of the State of Wisconsin by virtue of any of the acts or transactions set forth herein. Plaintiff further prays that pending the final hear-
[fol. 28] ing and determination of this action a temporary injunction be granted restraining defendant and his successors in office, his deputies, employes and all persons acting under him as hereinbefore prayed and that on final hearing said injunction be made perpetual. Plaintiff further prays for such other and further relief as may be equitable and proper in the premises.

Wherefore plaintiff prays that a writ of subpœna issue herein, directed to the above named defendant, W. Stanley Smith, Commissioner of Insurance of the State of Wisconsin, commanding him on a day certain to appear and answer to this bill of complaint.

Chrysler Sales Corporation. Ralph W. Jackman, Harold M. Wilkie, Oscar T. Toebass, Solicitors for Plaintiff. Larkin, Rathbone & Perry, of Counsel.

[fol. 29] *Duly sworn to by F. A. Morrison. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 30] Non-Valued Fire, Theft & Transportation Form

No. A-9652

EXHIBIT "A" TO BILL OF COMPLAINT AUTOMOBILE POLICY

Palmetto Fire Insurance Company, Sumter, South Carolina,

In consideration of the warranties and the premium hereinafter mentioned, does issue the Assured named therein, and legal representatives, for the term herein specified, to an amount not exceeding the amount of insurance herein specified, against direct loss or damage, from the perils insured against, to the body, machinery, and all standard factory equipment (but exclusive of extra equipment and accessories) of the automobiles described herein while within the limits of the United States (exclusive of Alaska, the Hawaiian and Phillipine Islands and Porto Rico) and Canada and Mexico, including while in building, on road, on railroad car or other conveyance ferry or inland steamer, or coastwise steamer between ports within said limits,

Amount: $ As specified: Premium: As agreed.

Name and address of assured: Chrysler Sales Corporation, Detroit, Michigan.

and/or for account of whom it may concern as hereinafter specified.

The term of this policy begins at Noon on the 1st day of July, 1925, and ends at Noon on the 1st day of July, 1926 Standard Time. (All certificates issued hereunder, however, remaining in full force and effect for the term specified in such certificates.)

Amount of Insurance: As specified. Dollars ($—.)

Warranties

The following are statements of facts known to and warranted by the Assured to be true, and this policy is issued by the Company relying upon the truth thereof:

1. Assured's occupation or business is: This information not required by insurer.

2. The following is the description of the automobiles: Information not required except as hereinafter specified.

3. The facts with respect to the purchase of the automobile described are as follows: This information not required by insurer except as hereinafter specified.

4. The uses to which the automobile described are and will be put, are: This information not required by insurer.

5. The automobile described is usually kept in garage, located: This information not required by insurer.

Non-vitiation Clause

Anything hereinafter contained to the contrary notwithstanding, the insurance provided for herein shall not be vitiated by the existence of any lien or mortgage, nor by the purpose for which any automobile covered by such insurance shall be used (except the unlawful transportation of liquor) nor by the nature of the occupation or business of any of the Assured, nor by the location where any such automobile is kept.

[fol. 31] Perils Insured Against (Except as Hereinafter Provided)

(a) Fire arising from any cause whatsoever; and lightning;

(b) While being transported in any conveyance by land or water, the stranding, sinking, collision, burning or derailment of such conveyance, including general average and salvage charges for which the Assured is legally liable.

(c) Theft, robbery or pilferage, excepting by any person or persons in the Assured's household or in the Assured's service or employment, whether the theft, robbery or pilferage occur during the hours of such service or employment or not, and excepting also the wrongful conversion, embezzlement, or secretion by a mortgagor or vendee in possession under mortgage, conditional sale or lease agreement, and excepting in any case, other than in case of the theft of the entire automobile described herein, the theft, robbery or pilferage of tools and repair equipment.

Exclusions

Property Excluded.—This Company shall not be liable for:

(a) Loss or damage to robes, wearing apparel, personal effects or extra bodies;

War, Riot, etc.—(b) Loss or damage caused directly or indirectly by Invasions, insurrection, riot, civil war or commotion, military, naval or usurped power, or by order of any civil authority.

This entire policy shall be void unless otherwise provided by agreement in writing added hereto:

Title and Ownership.—(a) If the interest of the Assured in the subject of this insurance be other than unconditional and sole ownership; or in the case of transfer or termination of the interest of the Assured other than by death of the Assured or in case of any change in the nature of the insurable interest of the Assured in the property described herein either by sale or otherwise; or

(b) If this policy or any part thereof shall be assigned before loss.

Encumbrance.—Unless otherwise provided by agreement in writing added hereto, this Company shall not be liable for loss or damage to any property insured hereunder.

(a) While encumbered by any lien or mortgage.

Conditions

Limitation of Liability and Method of Determining Same.—This company shall not be liable beyond the actual cash value of the property at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated accordingly within proper deduction for depreciation however caused (and without compensation for the loss of use of the property), and shall in no event exceed what it would then cost to repair or replace the automobile or such parts thereof as may be damaged with other of like kind and quality; such ascertainment or estimate shall be made by the Assured and this Company, or if they differ, then by appraisal as hereinafter provided.

Abandonment.—It shall be optional with this company to take all or any part of the property at the appraised

value where appraisal is had as hereinafter provided, but there can be no abandonment thereof to this Company; and where theft is insured against the Company shall have the right to return a stolen automobile or other property with compensation for physical damage at any time before actual payment hereunder.

Loss for which Bailee for Hire is Liable.—This Company shall not be liable for loss or damage to any property insured hereunder while in the possession of a bailee for hire under a contract, stipulation or assignment whereby the benefit of this insurance is sought to be made available to such bailee. Where loss or damage occurs for which bailee may be liable and which would otherwise be covered hereunder, this Company will advance to the Assured by way of [fol. 32] loan the money equivalent of such loss or damage, which loan shall in no circumstances affect the question of the Company's liability hereunder and shall be repaid to the extent of the net amount collected by or for account of the Assured from the bailee after deduction cost and expense of collection.

Noon.—The word "Noon" herein means noon of standard time at the place the contract was made.

Misrepresentation and Fraud.—Any certificate issued hereunder shall be void if the Assured name therein has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof; or in case of any fraud, attempted fraud, or false swearing by the Assured touching any matter relating to the insurance therein provided for or the subject thereof, whether before or after a loss.

Protection of Salvage.—In the event of loss or damage occasioned by a peril insured against herein the Assured shall protect the property from further loss or damage and any such further loss or damage occur-ing directly or indirectly from a failure to protect shall not be recoverable under this certificate. Any such act of the Assured or this Company or its agents in recovering, saving and preserving the property described herein, shall be considered as done for the benefit of all concerned and without prejudice to the rights of either party, and all reasonable expenses thus incurred shall constitute a claim under this policy; provided however that this Company shall not be responsible for the payment

of a reward offered for the recovery of the insured property unless authorized by the Company.

Notice and Proof of Loss.—In the event of loss or damage the Assured shall give forthwith notice thereof in writing to this Company; and within sixty (60) days after such loss, unless such time is extended in writing by this Company, shall render a statement to this Company signed and sworn to *be* the Assured, stating the place, time and cause of the loss or damage, the interest of the Assured and all others in the property, the sound value thereof and the amount of loss or damage thereon, all encumbrances thereon, and all other insurance whether valid or not covering said property; and the Assured, as often as required, shall exhibit to any person designated by this Company all that remains of the property insured and submit to examinations under oath by any person named by this Company, and subscribe the same; and as often as required, shall produce for examination all books of account, bills, invoices, and other vouchers, or certified copies thereof if originals be lost, at such reasonable place as may be designated by this Company or its representative, and shall permit extracts and copies thereof to be made.

Appraisal.—In case the Assured and this Company shall fail to agree as to the amount of loss or damage, each shall, on the written demand of either, select a competent and disinterested appraiser. The appraisers shall first select a competent and disinterested umpire; and failing for fifteen (15) days to agree upon such umpire then, on request of the Assured or this Company, such umpire shall be selected by a judge of a court of record in the county and State in which the property insured was located at time of loss. The appraisers shall then appraise the loss and damage stating separately sound value and loss or damage to each item; and failing to agree shall submit their differences only, to the umpire. An award in writing, so itemized of any two when filed with this Company shall determine the amount of sound value and loss or damage. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by the parties equally.

Payment of Loss.—This Company shall not be held to have waived any provision or condition of this policy or any forfeiture thereof by any requirement, act, or proceeding on its part relating to the appraisal, or to any examina-

tion herein provided for; and the loss shall in no event become payable until sixty (60) days after the notice ascertainment, estimate and verified proof of loss herein required have been received by this Company, and if appraisal is [fol. 33] demanded, then not until sixty days after an award has been made by the appraisers.

Subrogation.—This Company may require from the Assured an assignment of all right of recovery against any party for loss or damage to the extent that payment therefor is made by this Company.

Suit Against Company.—No suit or action on this policy for the recovery of any claim hereunder shall be sustainable in any court of law or equity unless the Assured shall fully comply with all the foregoing requirements, nor unless commended within twelve (12) months next after the happening of loss; provided that where such limitation of time is prohibited by the laws of the State wherein this policy is issued, then and in that event no suit under this policy shall be sustainable unless commenced within the shortest limitation permitted under the laws of such State.

This policy is made and accepted subject to the provisions, exclusions, conditions and warranties set forth herein or endorsed hereon, and upon acceptance of this policy, the Assured agrees that its terms embody all agreements then existing between himself and the Company or any of its agents relating to the insurance described herein, and no officer, agent or other representative of this Company shall have power to waive any of the terms of this policy unless such waiver be written upon or attached hereto; nor shall any privilege or permission affecting the insurance under this policy exist or be claimed by the Assured unless so written or attached.

[fol. 34] Exhibit "A" to Exhibit A to Bill of Complaint

Witnesseth, for valuable consideration, it is agreed that the following rider shall be attached to and form a part of Policy No. A9652 of the Palmetto Fire Insurance Company, herein called Insurer, and shall supersede and take the place of anything to the contrary in the other conditions and provisions of this policy.

I. Definitions

The following words, whether singular or plural, unless the context otherwise requires, shall mean—

Chrysler shall mean Chrysler Sales Corporation, a Michigan Corporation, of Highland Park, Mich., its successors and assigns.

Commercial Credit shall mean Commercial Credit Company, a Delaware Corporation of Baltimore, Md., its successors and assigns including its Branches and Sub-Branches.

Affiliated companies shall mean Commercial Credit Corporation, a New York Corporation of New York, N. Y.; Commercial Credit Company, Inc., a Louisiana Corporation of New Orleans, La.; Commercial Credit Trust of Chicago, Ill., a common law trust with trust deed on file at The Old Colony Trust Company, Boston, Mass., and shall also include any and all other corporations, common law trusts, firms or companies with which Commercial Credit is now or may become affiliated through stock ownership or otherwise; and all the branches and sub-branches of such affiliated Companies through which they may operate in financing the retail sale or lease of Chrysler Cars, and their respective successors or assigns.

Other finance companies shall mean banks, trust companies, finance or credit companies, corporations, co-partnerships, common law trusts, dealers, individuals and other organizations, other than Commercial Credit or Affiliated Companies, who may finance the retail sale or lease of Chrysler cars.

Chrysler cars shall mean new and unused commercial and passenger automobiles to be sold or distributed by Chrysler and which are or may be sold or distributed by Chrysler and which are or may be manufactured by Maxwell Motor Corporation, a West Virginia Corporation, of Detroit, Michigan, its successors or assigns.

Finance shall mean to purchase or loan upon or to cause to be purchased or loaned upon, to discount or otherwise acquire the notes and/or security instruments made and given to dealers by purchasers in connection with the purchase or lease of Chrysler cars at retail.

Dealer shall mean persons, firms, or corporations selling or leasing or agreeing to sell or lease Chrysler cars at retail.

Purchaser shall mean persons, firms or corporations purchasing or agreeing to purchase Chrysler cars at retail for cash or on deferred payments, or lease Chrysler cars at retail on deferred payments.

Notes shall mean promissory notes or other obligations made and given by purchasers to dealers as evidence of the [fol. 35] deferred payments owing on the retail purchase or lease price of Chrysler cars when they are sold or leased by dealers to purchasers upon a deferred payment plan.

Term of this policy shall mean the period during which insurance hereunder may become effective, to wit: July 1, 1925 to June 30, 1926, both dates inclusive.

Security instruments shall mean conditional sale contracts, chattel mortgages, leases, bailment contracts, other instruments, reserving or creating title, liens, security or other property interest in Chrysler cars sold at retail to purchasers on a deferred payment plan.

Policy shall mean this contract of insurance.

Certificate shall mean memorandum of insurance under this policy issued or to be issued as herein provided.

Insurance shall mean insurance against the hazards provided for in policy and/or certificates.

II. Purpose

Chrysler desires to increase the retail sale of Chrysler cars and to obtain for dealers a uniform maximum rate for financing retail sales and to provide insurance at a uniform maximum rate throughout the entire United States for the benefit of purchaser and/or other parties mentioned in the policy and certificates as their respective interests may appear on each Chrysler car purchased at retail. Chrysler proposes to advertise throughout the United States the benefits resulting to purchasers from insurance under policy and certificates issued hereunder. Commercial Credit desires to obtain so far as possible the financing of the retail sales of Chrysler cars. Insurer desires to obtain insurance in respect to all Chrysler cars sold and leased and delivered at retail to purchasers by dealers throughout the United States during the term of this policy.

III. Assured and Coverage.

Insurer does hereby insure Chrysler, Commercial Credit, and all Affiliated Companies, other Finance Companies, Dealers and Purchasers as their interest may appear against the hazards mentioned in the printed part of this policy to Chrysler cars but in no event shall this insurance cover loss or damage by confiscation of Chrysler cars used in violation of any liquor or prohibition statutes.

All banks, trust companies, persons, firms or corporations with or to whom Commercial Credit and/or Affiliated Company and/or Other Finance Companies hypothecate, trustee, pledge, transfer, assign and/or negotiate notes and/or security instruments, shall be protected by this insurance.

All parties covered hereunder shall be protected and be considered parties to this policy with the same force and effect as if they severally accepted the same, upon the acceptance of this contract by Commercial Credit and Chrysler.

Coverage hereunder and under said Certificates shall be for one hundred (100%) per cent of the list price of each Chrysler car covered hereby, f. o. b. Detroit, on date of purchase or lease of same by purchaser, including standard [fol. 36] equipment but exclusive of extra equipment and accessories, but in no event shall the Insurer be liable upon loss to or of any Chrysler car for an amount in excess of the actual cash value thereof at the time of such loss.

Coverage hereunder and under Certificates shall be automatically effective from the date on which (during the term of this policy) each Purchaser takes delivery of a Chrysler car or receives a bill of sale of a Chrysler car, whichever shall be the earlier, and shall extend in respect to such Chrysler car for a period of twelve (12) months; provided that in every case where a note and/or security instruments shall have been given in connection with the purchase of any Chrysler car, coverage on such car shall be effective from the date of such note and/or security instruments: and provided further, that no Chrysler car shall be insured hereunder which shall have been in possession or in transit to any dealer or distributor on July 1, 1925, and which shall not have been included in any detailed report provided for in Paragraph VII hereof.

It is expressly agreed that all Chrysler cars shall be auto-

matically covered as provided herein, notwithstanding the failure or omission to apply for a Certificate or the failure or omission to issue a Certificate or the failure or omission to report any Chrysler car as required herein. No act or omission to act by any purchaser or any of the other insured hereunder shall vitiate or in any manner effect the indemnity or coverage of the other parties insured hereunder not responsible for such act or omission to act, it being the intent that only parties responsible for such act or omission to act shall suffer thereby.

Anything herein to the contrary notwithstanding, is *is* expressly agreed that no Chrysler car shall be insured hereunder which does not at the time when the insurance thereon would otherwise become effective hereunder, carry a Class A Rating for fire insurance assigned by the National Board of Fire Underwriters, or is not continuously equipped with a locking device approved by Underwriters Laboratories of the National Board of Fire Underwriters and bearing their label.

Coverage on Chrysler cars shall not be vitiated or affected because such Chrysler cars are operated across the border of the United States into the territory of the Government of Mexico.

The insurance effected hereby shall be deemed to have been placed with Insurer through such insurance brokers as Commercial Credit may from time to time designate.

IV. Certificates

Insurer shall issue certificates to purchaser substantially in the form attached hereto which certificates and insurance evidenced hereby shall not be subject to cancellation by either party. If Chrysler cars are financed, there shall be issued upon request a duplicate of such certificate to Commercial Credit, Affiliated Companies or Other Finance Companies financing such Chrysler cars.

V. Transfers

If any original purchaser should transfer his interest in [fol. 37] any Chrysler car insured hereunder and should mail a notice of such transfer, together with his certificate and $1.50 to Insurer, said insurance coverage shall continue

for the unexpired term originally insured so as to protect transferee of original purchaser's interest, and Insurer shall issue new certificate for such unexpired term to transferee; provided, however, that if any such Chrysler car has been financed the consent in writing of Commercial credit, Affiliated Companies or Other Finance Companies financing the same shall first have been obtained to such transfer.

VI. Excess Insurance

In all cases where Insurer disclaims liability to a purchaser on account of other insurance, coverage hereunder shall be considered as excess insurance and shall not apply to any loss until the amount recoverable from such other insurance shall have been exhausted; if full recovery has not been made from such other insurance of all amounts owing on any note for a Chrysler car financed within 90 days of the filing of a claim for loss. Insurer shall advance the amount of its liability hereunder to the assured authorized to receive payment of the loss as a loan without interest, the payment of which shall be conditioned upon, and only to the estent of, any recovery from such other insurance.

In all cases where Insurer disclaims liability to a purchaser, Insurer may pay the amount of its Liability hereunder to the party authorized to receive the same, other than purchaser, as a loan without interest instead of a payment of a loss, the repayment of which to Insurer shall be conditioned upon and only to the extent of any recovery from purchaser by the party to whom such loan has been made by Insurer; if any action is brought against Purchaser at the request of Insurer, Insurer shall pay all attorneys' fees, expenses and costs of such action.

If any claims or legal action should be made or commenced against Chrysler, Commercial Credit, Affiliated Companies or other Finance Companies by purchaser arising out of the refusal of Insurer to pay any loss under this policy or certificate, Insurer shall defend any such claim or action and pay all attorney's fees, costs and expenses incurred and or judgments recovered in any such claim or action.

VII. Reports

At any time or from time to time during the term of this policy Chrysler shall send original detailed reports to Commercial Credit and a duplicate thereof to Insurer by mailing the same to Alexander and Alexander, Inc., 503 St. Paul Place, Baltimore, Md., for account of Insurer, of such Chrysler cars, with models and serial numbers thereof as were in the possession of or in transit to its distributors and or dealers and unsold as of July 1, 1925, and on which insurance is desired hereunder.

Chrysler shall send an original report to Commercial Credit and a duplicate thereof to Insurer by mailing same to Alexander and Alexander, Inc., 503 St. Paul Place, Baltimore, Md., for the account of Insurer, on or before the 15th day of each month beginning with the Month of August, 1925, for shipments during July, 1925, and ending with the month of July, 1926, showing separately the number of all [fol. 38] Chrysler 4 Cylinder, 6 Cylinder and Commercial cars shipped to its dealers and distributors throughout the United States during the preceding month, which Chrysler cars may be sold at retail in the future and then may become subject to insurance hereunder; said reports shall show the number of Open and Closed Chrysler 4 Cylinder, Open and Closed Chrysler 6 Cylinder, and Commercial Chassis and Commercial Cars with Bodies, with the serial and motor numbers respectively, thereof.

Chrysler further agrees to submit such other information as Insurer or Commercial Credit may from time to time reasonably require regarding Chrysler cars that are or may become covered by Insurance hereunder and to permit Insurer or Commercial Credit from time to time to check its reports against those of Chrysler in regard to such Chrysler cars.

VIII. Premiums

Agreed premiums are to be paid by Chrysler for insurance hereunder and shall be paid by Chrysler to Commercial Credit or to any insurance broker designated by Commercial Credit on or before the 15th day of each month, beginning on August 15, 1925, and ending on July 15, 1926, for all Chrysler cars reported by its distributors and dealers as sold and/or leased during the preceding month,

and insured hereunder, and a report thereof in detail shall accompany such remittance of premiums.

Commercial Credit shall on or before the 25th day of each month remit or cause the insurance brokerage concern designated by it to remit said insurance premiums to Alexander and Alexander, Inc., 503 St. Paul Place, Baltimore, Md., for the account of Insurer, and guarantees the payment of such premiums.

Payment of the agreed premiums hereunder made by Chrysler to Commercial Credit or to any insurance broker designated by it for that purpose shall be considered as payments made to the Insurer hereunder and the failure of Commercial Credit or of any such broker to remit such payments to Insurer shall not affect the insurance effected hereby or the validity of any certificate issued hereunder, or the rights of Chrysler hereunder.

IX. Payment of Losses

Payment of all losses claimed hereunder shall be made to purchaser unless the purchase of any Chrysler car has been financed in which case payment of all losses shall be made to Commercial Credit, Affiliated Companies or Other Finance Companies or Dealers financing the same for the account of all parties as their respective interests may appear.

X. Examination

All parties insured hereunder shall submit to an examination under oath by any person named by Insurer, and subscribe to same as often as shall be required, and shall produce for examination all books of accounts, bills, notes, or other records, or certified copies thereof if the originals cannot be found, in respect to any matters pertaining to coverage upon Chrysler cars hereunder, at such reasonable place as may be designated by Insurer or its representatives, and shall permit extracts and copies thereof to be made.

[fol. 39]

XI. Replacements

If Insurer should so select Chrysler will sell to Insurer new Chrysler cars at the wholesale list price, f. o. b. Detroit, on Date of loss, to replace any similar Chrysler car as to

which there has been filed a claim with the Insurer under this policy and/or certificate issued thereunder for total loss.

XII. Recording

Recording or filing of any security instruments shall not be required by Insurer but shall be optional with Commercial Credit, Affiliated Companies, Other Finance Companies and/or holders or owners of such security instruments.

XIII. Cancellations

This policy and certificates are not subject to cancellation by Insurer or any of the assured but this policy shall terminate June 30, 1926, unless previously renewed by mutual agreement; provided, however, that Certificates covering Chrysler cars insured as herein provided on any date up to and including the date of termination of this Policy shall be and remain in effect and protect all parties concerned until their respective expiration.

XIV. Qualified Company

Insurer warrants that it is qualified to do business in the State of Michigan, and that this policy shall be so executed, and all certificates shall be so issued, as to comply with the insurance laws of all of the States in which the purchasers reside.

XV. Michigan Law to Govern

Policy and certificates are to be construed and governed according to the laws of the State of Michigan.

To Commercial Credit Company.

To Chrysler Motor Corporation.

The foregoing rider will be attached to a standard form of automobile policy countersigned by our duly authorized representative in the State of Michigan and policy contract delivered to you completed.

Palmetto Fire Insurance Co., by Alexander & Alexander, Inc., General Agents. (Sgd.) W. F. Alexander, Vice-President.

Approved and accepted by P. Moses, President Palmetto Fire Insurance Co.

[fol. 40] Form of Certificate

No. —

Purchaser's Original Copy

Non-valued Fire, Theft & Transportation Automobile Form

This is to certify that under policy No. — of the Palmetto Fire Insurance Company of Sumter, South Carolina, issued to Chrysler Sales Corporation, covering for account of whom it may concern, the new Chrysler Passenger or Commercial car, sold or leased and delivered to Name of Purchaser: —— ——; Address (No.:) —, (Street:) ——, (City:) ——, (State:) ——, and described as follows: Year: ——; Model (If truck, state tonage); ——; Type of Body: ——; (Factory or Serial No.): ——; Motor No. ——, is insured against direct loss or damage from the perils insured against to the body, machinery and all standard factory equipment (but exclusive of extra equipment and accessories) while within the limits of the United States (exclusive of Alaska, the Hawaiian and Philippine Islands and Porto Rico) and/or while in Canada and/or in Mexico, including while in building, on road, on railroad car or other conveyance, ferry or inland steamer, or coastwise steamer between ports within said limits, for the period beginning at Noon —— —, ——, and ending at Noon —— —, ——, Standard Time, for a sum not exceeding — dollars ($—), being list price including all standard factory equipment F. O. B. Detroit, Michigan, subject to all the conditions, stipulations, provisions, exclusions and warranties set forth in said policy or which appear hereon.

The interest of the Chrysler Sales Corporation, and/or of purchasers, owners, dealers, finance companies, banks, trust companies, persons, firms or corporations or others having an insurable interest in said automobile are protected under this insurance with the same force and effect as if they severally accepted same, and the existence of all such interests is permitted.

Loss, if any, to be adjusted with purchaser, though to be paid subject to all conditions of this certificates only to, Name: —— ——, Address: ——, for account of all interests.

This insurance does not in any event cover loss or damage by confiscation of said car while used in violation of any liquor or prohibition statute.

The insurance hereunder shall be considered as excess insurance in the event of any other insurance covering the hazards hereunder insured and shall not apply to any loss until the amount recoverable from such other insurance shall have been exhausted.

It is a consideration of this insurance that the within described automobile shall be continuously equipped with locking device approved by Underwriters Laboratories of the National Board of Fire Underwriters and bearing their label.

This insurance is not subject to cancellation.

Anything herein contained to the contrary notwithstanding this insurance shall not be vitiated by the existence of any lien or mortgage nor by the purpose for which the automobile is used (except the unlawful transportation of liquor) nor by the nature of the assured's occupation or business nor by the location where the automobile is kept.

This insurance may be transferred by the original holder of this certificate, mailing notice of such transfer together with this certificate and $1.50 to insurer, said insurance continuing for the unexpired term originally insured, protecting the transferee's interest, providing consent in writing of any company financing the same shall first have been obtained to such transfer.

This certificate shall not be valid until countersigned by duly authorized agent at Detroit, Michigan.

Countersigned at Detroit, Mich, (Date:) —— — ——, by —— ——, Agent.

Provisions Required to be Stated by Law

[fol. 41] Form of Certificate

The policy under which this certificate is issued is subject to the following conditions:

Perils Insured Against (Except as Hereinafter Provided)

(a) Fire arising from any cause whatsoever; and lightning;

(b) While being transported in any conveyance by land or water, the stranding, sinking, collision, burning or derailment of such conveyance, including general average and salvage charges for which the Assured is legally liable.

(c) Theft, robbery or pilferage, excepting by any person or persons in the Assured's household or in the Assured's service or employment, whether the theft, robbery or pilferage occur during the hours of such service or employment or not, and excepting also the wrongful conversion, embezzlement, or secretion by a mortgagor or vendee in possession under mortgage, conditional sale or lease agreement, and excepting in any case, other than in case of the theft of the entire automobile described herein, the theft, robbery or pilferage of tools and repair equipment.

Exclusions

Property Excluded.—This Company shall not be liable for:

(a) Loss or damage to robes, wearing apparel, personal effects or extra bodies.

War, Riot, etc.—(b) Loss or damage caused directly or indirectly by invasion, insurrection, riot, civil war or commotion, military, naval or usurped power, or by order of any civil authority.

This entire policy shall be void unless otherwise provided by agreement in writing added hereto;

Title and Ownership.—(a) If the interest of the Assured in the subject of this insurance be other than unconditional and sole ownership, or in case of transfer or termination of the interest of the Assured other than by death of the Assured or in case of any change in the nature of the insurable interest of the Assured in the property described herein either by sale or otherwise; or

(b) If this policy or any part thereof shall be assigned before loss.

Encumbrance.—Unless otherwise provided by agreement in writing added hereto, this Company shall not be liable for loss or damage to any property insured hereunder.

(a) While encumbered by any lien or mortgage.

Conditions

Limitation of Liability and Method of Determining Same.—This Company shall not be liable beyond the actual cash value of the property at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated accordingly with proper deduction for depreciation however caused (and without compensation for the loss of use of the property), and shall in no event exceed what it would then cost to repair or replace the automobile or such parts thereof as may be damaged with other of like kind and quality; such ascertainment or estimate shall be made by the Assured and this Company, or if they differ, then by appraisal as hereinafter provided.

Abandonment.—It shall be optional with this company to take all or any part of the property at the appraised value where appraisal is had as hereinafter provided, but there can be no abandonment thereof to this Company; and where theft is insured against the Company shall have the right to return a stolen automobile or other property with compensation for physical damage at any time before actual payment hereunder.

Loss for Which Bailee for Hire is Liable.—This Company shall not be liable for loss or damage to any property insured hereunder while in the possession of a bailee for hire under a contract stipulation or assignment whereby the benefit of this insurance is sought to be made available to such bailee. Where loss or damage occurs for which a bailee may be liable and which would otherwise be covered hereunder, this Company will advance to the Assured by [fol. 42] way of loan of money equivalent of such loss or damage, which loan shall in no circumstance affect the question of the Company's liability hereunder and shall be repaid to the extent of the net amount collected by or for account of the Assured from the bailee after deducting cost and expense of collection.

Noon.—The word "Noon" herein means noon of standard time at the place the contract was made.

Misrepresentation and Fraud.—Any certificate issued hereunder shall be void if the Assured named therein has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof; or

in case of any fraud, attempted fraud, or false swearing by the Assured touching any matter relating to the insurance therein provided for or the subject thereof, whether before or after a loss.

Protection of Salvage.—In the event of loss or damage occasioned by a peril insured against herein the Assured shall protect the property from further loss or damage any such further loss or damage occurring directly or indirectly from a failure to protect shall not be recoverable under this certificate. Any such act of the Assured or this Company or its agents in recovering, saving and preserving the property described herein, shall be considered as done for the benefit of all concerned and without prejudice to the rights of either party, and all reasonable expenses thus incurred shall constitute a claim under this policy; provided however that this Company shall not be responsible for the payment of a reward offered for the recovery of the insured property unless authorized by the Company.

Notice and Proof of Loss.—In the event of loss or damage the Assured shall give forthwith notice thereof in writing to this Company; and within sixty (60) days after such loss, unless such time is extended in writing by this Company, shall render a statement to this Company signed and sworn to by the Assured, stating the place, time and cause of the loss or damage, the interest of the Assured and of all others in the property, the sound value thereof and the amount of loss or damage thereon, all encumbrances thereon, and all other insurance whether valid or not covering said property; and the Assured, as often as required, shall exhibit to any person designated by this Company all that remains of the property insured and submit to examinations under oath by any person named by this Company, and subscribe the same; and as often as required, shall produce for examination all books of account, bills, invoice, and other vouchers, or certified copies thereof if originals be lost, at such reasonable place as may be designated by this Company or its representative, and shall permit extracts and copies thereof to be made.

Appraisal.—In case the Assured and this Company shall fail to agree as to the amount of loss or damage, each shall, on the written demand of either, select a competent and disinterested appraiser. The appraisers shall first select a competent and disinterested umpire; and failing for

fifteen (15) days to agree upon such umpire then, on request of the Assured or this Company, such umpire shall be selected by a judge of a court of record in the County and State in which the property insured was located at time of loss. The appraisers shall then appraise the loss and damage stating separately sound value and loss or damage to each item; and failing to agree shall submit their differences only, to the umpire. An award in writing, so itemized, of any two when filed with this Company shall determine the amount of sound value and loss or damage. Each appraiser shall be paid by the party selecting him *the* the expenses of appraisal and umpire shall be paid by parties equally.

Payment of Loss.—This Company shall not be held to have waived any provision or condition of this policy or any forfeiture thereof by any requirement, act, or proceeding on its part relating to the appraisal, or to any examination herein provided for; and the loss shall in no event become payable until sixty (60) days after the notice, ascertainment, estimate and verified proof of loss herein required have been received by this Company and if ap- [fols. 43 & 43½] praisal is demanded, then not until sixty days after an award has been made by the appraisers.

Subrogation.—This Company may require from the Assured an assignment of all right of recovery against any party for loss or damage to the extent that payment therefor is made by this Company.

Suit Against Company.—No suit or action on this policy for the recovery of any claim hereunder shall be sustainable in any court of law or equity unless the Assured shall have fully complied with all the foregoing requirements, nor unless commended within twelve (12) months next after the happening of the loss; provided that where such limitation of time is prohibited by the laws of the State wherein this policy is issued, then and in that event no suit or action under this policy shall be sustainable unless commenced within the shortest limitation permitted under the law of such State.

This policy is made and accepted subject to the provisions, exclusions, conditions and warranties set forth herein or endorsed hereon, and upon acceptance of this policy, the Assured agrees that its terms embody all agreements then existing between himself and the Company or any of its

agents relating to the insurance described herein, and no officer, agent or other representative of this Company shall have power to waive any of the terms of this policy unless such waiver be written upon or attached hereto, nor shall any privilege or permission affecting the insurance under this policy exist or be claimed by the Assured unless so written or attached.

[fol. 44] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF B. E. HUTCHINSON—Filed August 22, 1925

STATE OF WISCONSIN,
County of Douglas, ss:

B. E. Hutchinson being first duly sworn, states: That he is an officer, to-wit: the Vice President and Treasurer of the Chrysler Sales Corporation, named in the complaint in this action; that he has read the complaint in this action and knows the contents thereof, and that to his knowledge the facts as therein alleged are true; that the contract of insurance between the Chrysler Sales Corporation and the Palmetto Fire Insurance Company referred to in said complaint, was made June 16, 1925, at Detroit, Michigan, and was in the City of Detroit, Michigan, then and there duly signed, delivered and accepted by said Insurance Company and the Chrysler Sales Corporation and the Commercial Credit Company named and referred to in said contract.

That on August 4th, 1925, at the City of Detroit, in the state of Michigan, a further contract or insurance policy was entered into between said Palmetto Insurance Company and said Chrysler Sales Corporation, a copy of which is hereto attached marked Exhibit "A," and consisting of printed pages 28 to 59 inclusive, attached to and made a part hereof; that said contract or policy was signed, delivered and accepted at Detroit, Michigan, on August 4th, 1925, and was then and there duly consented to by the Commercial Credit [fol. 45] Company.

Affiant further says that the Chrysler Sales Corporation, has not, at any of the times mentioned in the complaint herein, nor at any other time maintained any agencies in

the state of Wisconsin, nor had any office for the transaction of business in the state of Wisconsin, nor has it transacted or pretended to transact any business in the state of Wisconsin; but that the Chrysler Sales Corporation sells in Interstate Commerce all the cars sold by it. All cars are sold f. o. b. Detroit and are delivered to common carrier at Detroit, unless the distributor or dealer comes into Michigan and personally obtains the car there. However, cars sold to Michigan distributors and dealers are sold in Michigan.

That said Chrysler Corporation has many customers in the state of Wisconsin, but said customers buy in Interstate Commerce and that all cars sold by said Chrysler Sales Corporation are sold pursuant to contracts of sale involving and to be performed by shipments in interstate commerce;

That the agencies mentioned in the complaint are wholesale dealers who are simply customers of said Chrysler Sales Corporation; such wholesale customers are commonly known in the trade as "distributors;" the sub-dealers, who buy from the distributors are commonly known as "dealers;" each is in business for himself and not acting as agent for the Chrysler Sales Corporation.

All orders for cars from distributors and dealers in the state of Wisconsin to the Chrysler Sales Corporation are accepted or rejected at Detroit, Michigan, by the Chrysler Sales Corporation; the Chrysler Sales Corporation has never sold any car or cars in Wisconsin, but as stated in the complaint herein, has built up a large and valuable business with Wisconsin customers.

[fol. 46] Affiant further says that such business will be irreparably damaged unless a temporary injunction is granted restraining the defendant herein, as prayed in the complaint, pending this action, and that unless such temporary injunction is issued, and final decree which may be rendered in this action would be ineffectual.

That if the defendant is not now temporarily enjoined, as prayed in the complaint, the injury to the Chrysler Sales Corporation in its business will be immediate and extremely serious.

Affiant further says that if the said laws of Wisconsin should be construed as claimed by the defendant herein, said laws must be held void as in conflict with the full faith and credit clause of the Federal constitution, and also as in

violation of the Federal Constitution insofar as the same prevents and prohibit a state from imposing a burden on Interstate Commerce.

B. E. Hutchinson.

Subscribed and sworn to before me this 22nd day of August, 1925. Margaret M. Hoit, Notary Public, Douglas County, Wisconsin. My commission expires Nov. 27, '27. (Notarial Seal.)

[File endorsement omitted.]

[fol. 47] "Exhibit A" to Affidavit of B. E. Hutchinson

Non-valued Fire, Theft & Transportation Form

No. A-9657. Automobile Policy

Palmetto Fire Insurance Company, Sumter, South Carolina,

In consideration of the warranties and the premium hereinafter mentioned, does issue the Assured named therein, and legal representatives, for the term herein specified, to an amount not exceeding the amount of insurance herein specified, against direct loss or damage, from the perils insured against, to the body, machinery and all standard factory equipment (but exclusive of extra equipment and accessories) of the automobiles described herein while within the limits of the United States (exclusive of Alaska, the Hawaiian and Philippine Islands and Porto Rico) and Canada and Mexico, including while in building, on road, on railroad car or other conveyance ferry or inland steamer, or coastwise steamer between ports within said limits,

Amount: $ As specified. Premium: As agreed.

Name and Address of assured: Chrysler Sales Corporation, Detroit, Michigan, and/or for account of whom it may concern as hereinafter specified.

The term of this policy begins at Noon on the 1st day of July, 1925, and ends at Noon on the 1st day of July, 1926 Standard Time. (All certificates issued hereunder, however, remaining in full force and effect for the term specified in such certificates).

Amount of Insurance: As specified. Dollars ($—).

Warranties

The following are statements of facts known to and warranted by the Assured to be true and this policy is issued by the Company relying upon the truth thereof:

1. Assured's occupation or business is: This information not required by insurer.
2. The following is the description of the automobiles: Information not required except as hereinafter specified.
3. The facts with respect to the purchase of the automobile described are as follows: This information not required by insurer except as hereinafter specified.
4. The uses to which the automobile described are and will be put are: This information not required by insurer.
5. The automobile described is usually kept in garage, located: This information not required by insurer.

Non-vitiation Clause

Anything hereinafter contained to the contrary notwithstanding, the insurance provided for herein shall not be vitiated by the existence of any lien or mortgage, nor by the purpose for which any automobile covered by such insurance shall be used (except the unlawful transportation of liquor) nor by the nature of the occupation or business of any of the Assured, nor by the location where any such automobile is kept.

[fol. 48] Perils Insured Against (Except as Hereinafter Provided)

(a) Fire arising from any cause whatsoever; and lightning;

(b) While being transported in any conveyance by land or water, the stranding, sinking, collision, burning or derailment of such conveyance, including general average and salvage charges for which the Assured is legally liable.

(c) Theft, robbery or pilferage, excepting by any person or persons in the Assured's household or in the Assured's service or employment, whether the theft, robbery or pilferage occur during the hours of such service or employment or not, and excepting also the wrongful conversion, embezzlement, or secretion by a mortgagor or vendee in possession under mortgage, conditional sale or lease agree-

ment, and excepting in any case, other than in case of the theft of the entire automobile described herein, the theft, robbery or pilferage of tools and repair equipment.

Exclusions

Property Excluded.—This Company shall not be liable for;

(a) Loss or damage to robes, wearing apparel, personal effects or extra bodies.

War, Riot, etc.—(b) Loss or damage caused directly or indirectly by Invasions, insurrection, riot, civil war or commotion, military, naval or usurped power, or by order of any civil authority.

This entire policy shall be void unless otherwise provided by agreement in writing added hereto:

Title and Ownership.—(a) If the interest of the Assured in the subject of this insurance be other than unconditional and sole ownership; or in case of transfer or termination of the interest of the Assured other than by death of the Assured or in case of any change in the nature of the insurable interest of the Assured in the property described herein either by sale or otherwise; or

(b) If this policy or any part thereof shall be assigned before loss.

Encumbrance.—Unless otherwise provided by agreement in writing added hereto, this Company shall not be liable for loss or damage to any property insured hereunder.

(a) While encumbered by any lien or mortgage.

Conditions

Limitation of Liability and Method of Determining Same.—This company shall not be liable beyond the actual cash value of the property at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated accordingly within proper deduction for depreciation however caused (and without compensation for the loss of use of the property), and shall in no event exceed what it would then cost to repair or replace the automobile or such parts thereof as may be damaged with other of like kind and quality; such ascertainment or estimate

shall be made by the Assured and this Company, or if they differ, then by appraisal as hereinafter provided.

Abandonment—It shall be optional with this company to take all or any part of the property at the appraised value where appraisal is had as hereinafter provided, but there can be no abandonment thereof to this Company, and where theft is insured against the Company shall have the right to return a stolen automobile or other property with compensation for physical damage at any time before actual payment hereunder.

Loss for Which Bailee for Hire is Liable—This Company shall not be liable for loss or damage to any property insured hereunder while in the possession of a bailee for hire under a contract, stipulation or assignment whereby the benefit of this insurance is sought to be made available to such bailee. Where loss or damage occurs for which bailee may be liable and which would otherwise be covered hereunder, this Company will advance to the Assured by [fol. 49] way of loan the money equivalent of such loss or damage, which loan shall in no circumstances affect the question of the Company's liability hereunder and shall be repaid to the extent of the net amount collected by or for account of the Assured from the bailee after deducting cost and expense of collection.

Noon.—The word "Noon" herein means noon of standard time at the place the contract was made.

Misrepresentation and Fraud.—Any certificate issued hereunder shall be void if the Assured named therein has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof; or in case of any fraud, attempted fraud, or false swearing by the Assured touching any matter relating to the insurance therein provided for or the subject thereof, whether before or after a loss.

Protection of Salvage.—In the event of loss or damage occasioned by a peril insured against herein the Assured shall protect the property from further loss or damage — any such further loss or damage occurring directly or indirectly from a failure to protect shall not be recoverable under this certificate. Any such act of the Assured or this Company or its agents in recovering, saving and preserving the property described herein, shall be considered as

done for the benefit of all concerned and without prejudice to the rights of either party, and all reasonable expenses thus incurred shall constitute a claim under this policy; provided however that this Company shall not be responsible for the payment of a reward offered for the recovery of the insured property unless authorized by the Company.

Notice and Proof of Loss.—In the event of loss or damage the Assured shall give forthwith notice thereof in writing to this Company; and within sixty (60) days after such loss, unless such time is extended in writing by this Company, shall render a statement to this Company signed and sworn to by the Assured, stating the place, time and cause of the loss or damage, the interest of the Assured and of all others in the property, the sound value thereof and the amount of loss or damage thereon, all encumbrances thereon, and all other insurance whether valid or not covering said property; and the Assured, as often as required, shall exhibit to any person designated by this Company all that remains of the property insured and submit to examinations under oath by any person named by this Company, and subscribe the same; and as often as required, shall produce for examination all books of account, bills, invoice, and other vouchers, or certified copies thereof if originals be lost, at such reasonable place as may be designated by this Company or its representative, and shall permit extracts and copies thereof to be made.

Appraisal.—In case the Assured and this Company shall fail to agree as to the amount of loss or damage, each shall, on the written demand of either, select a competent and disinterested appraiser. The appraisers shall first select a competent and disinterested umpire; and failing for fifteen (15) days to agree upon such umpire then, on request of the Assured or this Company, such umpire shall be selected by a judge of a court of record in the county and State in which the property insured was located at time of loss. The appraisers shall then appraise the loss and damage stating separately sound value and loss or damage to each item; and failing to agree shall submit their differences only, to the umpire. An award in writing, so itemized, of any two when filed with this Company shall determine the amount of sound value and loss or damage. Each appraiser shall be paid by the party selecting him and the

expenses of appraisal and umpire shall be paid by parties equally.

Payment of Loss.—This Company shall not be held to have waived any provision or condition of this policy or any forfeiture thereof by any requirement, act, or proceeding on its part relating to the appraisal, or to any examination herein provided for; and the loss shall in no event become payable until sixty (60) days after the notice, ascertainment, estimate and verified proof of loss herein required have been received by this Company, and if ap-
[fol. 50] praisal is demanded, then not until sixty days after an award has been made by the appraisers.

Subrogation.—This Company may require from the Assured an assignment of all right of recovery against any party for loss or damage to the extent that payment therefor is made by this Company.

Suit Against Company.—No suit or action on this policy for the recovery of any claim hereunder shall be sustainable in any court of law or equity unless the Assured shall have fully complied with all the foregoing requirements, nor unless commen*ded* within twelve(12) months next after the happening of the loss; provided that where such limitation of time is prohibited by the laws of the State wherein this policy is issued, then and in that event no suit under this policy shall be sustainable unless commenced within the shortest limitation permitted under the law of such State.

This policy is made and accepted subject to the provisions, exclusions, conditions and warranties set forth herein or endorsed hereon, and upon acceptance of this policy, the Assured agrees that its terms embody all agreements then existing between himself and the Company or any of its agents relating to the insurance described herein, and no officer, agent or other representative of this Company shall have power to waive any of the terms of this policy unless such waiver be written upon or attached hereto; nor shall any privilege or permission affecting the insurance under this policy exist or be claimed by the Assured unless so written or attached.

[fol. 51] EXHIBIT "A" TO EXHIBIT A TO AFFIDAVIT OF B. E. HUTCHINSON

Rider attached to and forming part of policy No. A-9657 of the Palmetto Fire Insurance Company herein called "Insurer." This rider shall supersede and take the place of anything to the contrary in the conditions and provisions of the policy to which it is attached.

I. Definitions

The following words whether singular or plural, unless the context otherwise requires, shall be given the following meanings:

Chrysler shall mean Chrysler Sales Corporation, a Michigan Corporation of Highland Park, Michigan, its successors and assigns.

Finance companies shall mean banks, trust companies, finance or credit companies, corporations, partnerships, trusts, dealers, individuals and other organizations who may finance the retail sale or lease of Chrysler cars.

Chrysler cars shall mean new and unused commercial passenger automobiles sold or distributed by Chrysler and which have been or may hereafter be manufactured by Chrysler Motor Corporation, a Delaware corporation, of Detroit, Michigan, its successors or assigns.

To finance shall mean to purchase or loan upon, or to cause to be purchased or loaned upon, to discount or otherwise acquire the notes and/or security instruments made and given to dealers by purchasers in connection with the purchase or lease of Chrysler cars at retail.

[fol. 52] Dealer shall mean persons, firms or corporations selling or leasing, or agreeing to sell or lease Chrysler cars at retail.

Purchaser shall mean persons, firms or corporations purchasing or agreeing to purchase Chrysler cars at retail for cash or on deferred payments, or to lease Chrysler cars at retail on the deferred payment plan.

Notes shall mean promissory notes or other obligations made and given by purchasers to dealers as evidence of the deferred payments owing on the retail purchase or lease price of Chrysler cars when they are sold or leased by dealers to purchasers upon a deferred payment plan.

Term of this policy shall mean the period during which insurance hereunder may become effective, to wit: from July 1st, 1925, to June 30th, 1926, both dates inclusive.

Security instruments shall mean conditional sale contracts, chattel mortgages, leases, bailments, contracts, and/or other instruments reserving or creating title, liens, security or other property interest in Chrysler cars sold at retail to purchasers on a deferred payment plan.

Policy shall mean this contract of insurance.

Certificate shall mean memorandum of insurance under this policy issued or to be issued as herein provided.

Insurance shall mean insurance against the perils insured against in the policy and/or certificate.

II. Assured and Coverage

The Insurer does hereby insure finance companies, dealers and purchasers as their interests may appear against [fol. 53] loss or damage caused by or arising out of any of the hazards mentioned in the printed part of this policy, to Chrysler cars, provided, however, that the lawful seizure and/or confiscation of any Chrysler car for violation of any liquor or prohibition statute by or with the knowledge or consent of the purchaser, shall terminate the liability thereunder of Insurer as to the purchase or leases of such car, but shall not affect the liability hereunder of Insurer as to other parties.

All banks, trust companies, persons, firms or corporations with or to whom finance companies hypothecate, trustee, pledge, transfer, assign and/or negotiate notes and/or security instruments shall be protected by this insurance.

Coverage hereunder and under certificates issued hereunder shall be for one hundred per cent (100%) of the list price, F. O. B. Detroit, of each Chrysler car insured hereunder, on the date of purchase or lease of said by the purchaser, including standard equipment, and any extra equipment and accessories costing in the aggregate not to exceed One hundred dollars ($100). The limit of liability of the Insurer for loss or damage to a Chrysler car with standard equipment insured hereunder, shall be the total cash value of such car and standard equipment at the time of such loss or damage. The limit of liability of Insurer for loss or damage to extra equipment and accessories insured hereunder,

shall be seventy-five per cent (75%) of the actual cash value of such extra equipment and accessories at the time of such loss or damage, in no event to exceed the sum of seventy-five dollars ($75.00).

Coverage hereunder and under certificates is automatically effective from the date on which (during the term of this policy) each purchaser takes delivery of a Chrysler car or receives a bill of sale of a Chrysler car, which ever shall be the earlier, and shall extend in respect to such Chrysler car for a period of twelve (12) months; provided, that in [fol. 54] every case where notes and/or security instruments shall have been given in connection with the purchase of any Chrysler car, coverage on such car shall be effective from the date of such notes and/or security instruments.

It is specifically agreed that every Chrysler car sold at retail during the term of this policy, shall be automatically covered hereunder, notwithstanding any failure or omission to issue a certificate or any failure or omission to report the sale of such car as required herein. No act or omission of any beneficiary hereunder shall vitiate or affect the indemnity or coverage of any other party insured hereunder, who is not responsible for such act or omission to act, it being the intent of this policy that only parties responsible for acts or omissions to act shall suffer thereby.

Anything to the contrary herein notwithstanding, it is expressly agreed that no Chrysler car shall be covered hereby which does not, when the purchaser takes delivery of the same or receives a bill of sale thereof, carry a Class A rating for fire insurance by the National Board of Fire Underwriters or which is not continuously equipped with a locking device approved by the Underwriters Laboratories of the National Board of Fire Underwriters and bearing their label.

Coverage hereunder on any Chrysler car shall not be vitiated or affected because such Chrysler car is operated across the border of the United States and into the territory of the Government of Mexico.

III. Certificates

Insurer shall issue certificates to purchasers in the form attached hereto, which certificates and insurance evidenced [fol. 55] thereby, shall not be subject to cancellation by

either party. If sales of Chrysler cars are financed there shall be issued at the request of finance companies financing same, duplicates of certificates.

IV. Transfers

If any original purchaser shall transfer his interest in a Chrysler car, insured hereunder, and shall mail a notice of such transfer together with his certificate, and $1.50 to the insurer at its office No. —, Detroit, Michigan, (said charge being to defray the cost of issuing a new certificate), insurance hereunder shall inure to the benefit of the transferee for the unexpired term originally insured, and Insurer will issue a new certificate for such unexpired term to such transferee; provided, however, that if the sale of the car so transferred has been financed, the consent in writing of any finance company financing the same shall first be obtained to such transfer.

V. Excess Insurance

In all cases where Insurer disclaims liability to a purchaser on account of other insurance, coverage hereunder shall be considered as excess insurance, and shall not apply to any loss or damage until amount recoverable from such other insurance shall have been exhausted; if full recovery has not been made within 90 days of a claim for loss from such other insurance of all amounts owing on any note for a Chrysler car, insurer shall advance the amount of its liability hereunder to the insured authorized to receive payment of the loss or damage as a loan without interest, the [fol. 56] repayment of which shall be conditioned upon and be required to be made only to the extent of any recovery from such other insurance.

In all cases where Insurer disclaims liability to a purchaser, Insurer may pay the amount of its liability hereunder to the party authorized to receive the same, other than purchaser, as a loan without interest, instead of as payment of a loss, the repayment of which loan to the Insurer shall be conditioned upon and be required to be made only to the extent of any recovery from the purchaser by the party to whom such loan has been made by the Insurer. If any action is brought against purchaser at the request

of Insurer, Insurer shall pay all attorney fees, expenses and costs in such action.

VI. Disclaimer of Liability by Insurer

If any claim or legal action be made or commenced against Chrysler, or any finance company, by purchaser, arising out of the refusal of insurer to pay any loss under this policy, or a certificate issued hereunder, Insurer shall defend against such claim or action and pay all attorney fees, costs and expenses incurred and/or judgments recovered in any such claim or action.

VII. Reports

Commencing with the 15th day of August, 1925, and on the 15th day of each calendar month thereafter until and including July, 1926, Chrysler shall send a monthly report to the Insurer at — Detroit, Michigan, of all cars insurance with respect to which is hereunder contemplated and provided for. Such reports shall show separately the num- [fol. 57] ber of all Chrysler four-cylinder cars open and closed, Chrysler six-cylinder cars open and closed, commercial chassis and commercial cars with bodice with serial and motor numbers respectively thereof. The report of August 15, 1925, shall show the cars in possession of or in transit to distributors and/or dealers in the United States on July 1, 1925, and cars thereafter shipped during the month ending July 31, 1925. Subsequent reports shall show shipments to distributors and/or dealers in the United States during the calendar month preceding the month in which the report is sent.

Chrysler further agrees to submit such other information as Insurer may from time to time reasonably require regarding Chrysler cars that are or may be covered by insurance hereunder and to permit Insurer from time to time to check its records against Chrysler records in regard to such Chrysler cars.

VIII. Premiums

Agreed premiums are to be paid by Chrysler to Insurer through Alexander & Alexander, Inc., General Agents, at —, Detroit, Michigan, for insurance hereunder on or

before the 15th day of each month beginning August 15, 1925, and ending July 15, 1926, for all Chrysler cars reported by its distributors and dealers as sold and/or leased during the preceding calendar month and insured hereunder.

Such report shall be accompanied by an itemized statement.

IX. Payment of Losses

Payment of all losses claimed hereunder shall be made by purchaser unless the purchase of a car with respect to which claim is made, has been financed in which case payment of the loss shall be made to any finance company, dis- [fol. 58] tributor or dealer financing the same, for account of all parties as their respective interest may appear.

X. Examination

All parties insured hereunder shall submit to examination under oath by any person named by Insurer as often as shall be required and shall subscribe to same and shall produce for examination all books of account, bills, notes, or other records, or certified copies thereof if the originals cannot be found, in respect to any matters pertaining to coverage of any Chrysler car hereunder at such reasonable place as may be designated by Insurer or its representatives and to permit extracts and copies thereof to be made.

XI. Replacements

If Insurer should so elect Chrysler will sell to Insurer new Chrysler cars at the wholesale list price F. O. B. Detroit on date of loss to replace any similar Chrysler car as to which there has been filed with the Insurer a claim for total loss under this policy and/or certificate issued hereunder.

XII. Recording

The recording or filing of security instruments shall not be required by Insurer but shall be optional with the finance company interested and/or holders, and/or owners of such security instruments.

XIII. Cancellation

This policy and certificates are not subject to cancella-
[fol. 59] tions by Insurer or by any of the insured; this policy shall terminate June 30, 1926, unless previously renewed by mutual agreement; provided, however, that coverage under certificates issued hereunder at any time during the terms of this policy shall be and remain in full force as to all parties concerned until the expiration dates named in such certificates.

XIV. Qualified Company.

Insurer warrants that it is qualified to do business in the State of Michigan, and that this policy is so executed and all certificates thereunder shall be so issued as to comply with and conform to all laws State or Federal at any time applicable, and agrees to do all things which may be necessary to do, in order to comply with said laws and to carry out the terms, provisions and purposes of this policy and of certificates issued hereunder, it being expressly understood that it is one of the purposes of this policy that Insurer shall issue certificates of insurance hereunder with respect to every Chrysler car sold at retail throughout the United States during the term of this policy.

XV. Michigan Law and Acceptance

This policy and the certificates issued hereunder are to be construed in accordance with and governed by the laws of the state of Michigan, and acceptance of this policy by Chrysler at Detroit, Michigan, shall put the same in full force and effect with respect to all parties covered hereunder or under any certificate issued hereunder.

Palmetto Fire Insurance Co., by Edwin J. Carter, Agent.

Approved and accepted by P. Moses, President Palmetto Fire Insurance Co.

[fol. 60] It is understood and agreed that Policy No. A9657 executed the 4th day of August, 1925, by the Palmetto Insurance Company shall take the place of and be substituted for Policy No. A-9652, executed on or about the 16th day of June, 1925, which is hereby abrogated.

Certificate issued under said Policy A-9652 shall be considered as issued under this policy and be governed by the terms hereof.

Executed at Detroit, Michigan, this 4th day of August, 1925.

Chrysler Sales Corporation, by (S.) H. A. Davies, Asst. Treas. Palmetto Fire Insurance Company, by (S.) Edwin J. Carter, Agent.

The above contract is consented to by us.

Commercial Credit Company, by —— ——.

[fol. 61] Form of Certificate. No. —

Purchaser's Original Copy

Non-valued Fire, Theft, & Transportation Automobile Form

This is to certify that under policy No. — of the Palmetto Fire Insurance Company of Sumter, South Carolina, issued to Chrysler Sales Corporation, covering for account of whom it may concern, the new Chrysler Passenger or Commercial car, sold or leased and delivered to Name of Purchaser: —— ——; Address (No.:) — Street:) ——, (City:) ——, (State:) ——, and described as follows: Year: ——, Model: ——; Type of Body (If truck, state tonnage): ——; Factory or Serial No.: —; Motor No.: —, is insured against direct loss or damage from the perils insured against to the body, machinery and all standard factory equipment (but exclusive of extra equipment and accessories) while within the limits of the Unitel States (exclusive of Alaska, the Hawaiian and Philippine Islands and Porto Rico) and/or while in Canada and/or in Mexico, including while in building, on road, on railroad car or other conveyance, ferry or inland steamer, or coastwise steamer between ports within said limits, for the period beginning at Noon —— —, ——, and ending at Noon —— —, ——, Standard Time, for a sum not exceeding — dollars ($—), being list price including all standard factory equipment F. O. B. Detroit, Michigan, subject to all the conditions, stipulations, provisions, exclusions and warranties set forth in said policy or which appear hereon.

The interest of the Chrysler Sales Corporation, and/or of purchasers, owners, dealers, finance companies, banks, trust compaines, persons, firms or corporations or others having an insurable interest in said automobile are protected under this insurance with the same force and effect as if they severally accepted same, and the existence of all such interests is permitted.

Loss, if any, to be adjusted with purchaser, though to be paid subject to all conditions of this certificate only to, Name, —— ——; Address: —, for account of all interests.

This insurance does not in any event cover loss or damage by confiscation of said car while used in violation of any liquor or prohibition statute.

The insurance hereunder shall be considered as excess insurance in the event of any other insurance covering the hazards hereunder insured and shall not apply to any loss until the amount recoverable from such other insurance shall have been exhausted.

It is a consideration of this insurance that the within described automobile shall be continuously equipped with locking device approved by Underwriters Laboratories of the National Board of Fire Underwriters and bearing their label.

This insurance is not subject to cancellation.

Anything herein contained to the contrary notwithstanding this insurance shall not be vitiated by the existence of any lien or mortgage, nor by the purpose for which the automobile is used (except the unlawful transportation of liquor) nor by the nature of the assured's occupation or business, nor by the location where the automobile is kept.

This insurance may be transferred by the original holder of this certificate, mailing notice of such transfer together with this certificate and $1.50 to insurer, said insurance continuing for the unexpired term originally insured, protecting the transferee's interest, providing consent in writing of any company financing the same shall first have been obtained to such transfer.

This certificate shall not be valid until countersigned by duly authorized agent at Detriot, Michigan.

Countersigned at Detroit, Mich., (Date:) —— —, ——, by —— ——, Agent.

Provisions Required to be Stated by Law

[fol. 62] Form of Certificate

The policy under which this certificate is issued is subject to the following conditions:

Perils Insured Against (Except as Hereinafter Provided)

(a) Fire arising from any cause whatsoever; and lightning;

(b) While being transported in any conveyance by land or water, the stranding, sinking, collision, burning or derailment of such conveyance, including general average and salvage charges for which the Assured is legally liable.

(c) Theft, robbery or pilferage, excepting by any person or persons in the Assured's household or in the Assured's service or employment, whether the theft, robbery or pilferage occur during the hours of such service or employment or not, and excepting also the wrongful conversion, embezzlement, or secretion by a mortgagor or vendee in possession under mortgage, conditional sale or lease agreement, and excepting in any case, other than in case of the theft of the entire automobile described herein, the theft, robbery or pilferage of tools and repair equipment.

Exclusions

Property Excluded.—This Company shall not be liable for:

(a) Loss or damage to robes, wearing apparel, personal effects or extra bodies.

War, Riot, etc.—(b) Loss or damage caused directly or indirectly by invasion, insurrection, riot, civil war or commotion, military, naval or usurped power, or by order of any civil authority.

This entire policy shall be void unless otherwise provided by agreement in writing added hereto;

Title and Ownership.—(a) If the interest of the Assured in the subject of this insurance be other than unconditional and sole ownership, or in case of transfer or termination of the interest of the Assured other than by death of the Assured or in case of any change in the nature of the in-

surable interest of the Assured in the property described herein either by sale or otherwise; or

(b) If this policy or any part thereof shall be assigned before loss.

Encumbrance.—Unless otherwise provided by agreement in writing added hereto, this Company shall not be liable for loss or damage to any property insured hereunder.

(a) While encumbered by any lien or mortgage.

Conditions

Limitation of Liability and Method of Determining Same.—This Company shall not be liable beyond the actual cash value of the property at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated accordingly with proper deduction for depreciation however caused (and without compensation for the loss of use of the property), and shall in no event exceed what it would then cost to repair or replace the automobile or such parts thereof as may be damaged with other of like kind and quality; such ascertainment or estimate shall be made by the Assured and this Company, or if they differ, then by appraisal as hereinafter provided.

Abandonment.—It shall be optional with this company to take all or any part of the property at the appraised value where appraisal is had as hereinafter provided, but there can be no abandonment thereof to this Company; and where theft is insured against the Company shall have the right to return a stolen automobile or other property with compensation for physical damage at any time before actual payment hereunder.

Loss for Which Bailee for Hire is Liable.—This Company shall not be liable for loss or damage to any property insured hereunder while in the possession of a bailee for hire under a contract, stipulation or assignment whereby the benefit of this insurance is sought to be made available to such bailee. Where loss or damage occurs for which a bailee may be liable and which would otherwise be covered hereunder, this Company will advance to the Assured by [fol. 63] way of loan the money equivalent of such loss or damage, which loan shall in no circumstances affect the question of the Company's liability hereunder and shall be repaid to the extent of the net amount collected by or

for account of the Assured from the bailee after deducting cost and expense of collection.

Noon.—The word "Noon" herein means noon of standard time at the place the contract was made.

Misrepresentation and Fraud.—Any certificate issued hereunder shall be void if the Assured named therein has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof; or in case of any fraud, attempted fraud, or false swearing by the Assured touching any matter relating to the insurance therein provided for or the subject thereof, whether before or after a loss.

Protection of Salvage.—In the event of loss or damage occasioned by a peril insured against herein the Assured shall protect the property from further loss or damage and any such further loss or damage occurring directly or indirectly from a failure to protect shall not be recoverable under this certificate. Any such act of the Assured or this Company or its agents in recovering, saving and preserving the property described herein, shall be considered as done for the benefit of all concerned and without prejudice to the rights of either party, and all reasonable expenses thus incurred shall constitute a claim under this policy; provided however that this Company shall not be responsible for the payment of a reward offered for the recovery of the insured property unless authorized by the Company.

Notice and Proof of Loss.—In the event of loss or damage the Assured shall give forthwith notice thereof in writing to this Company; and within sixty (60) days after such loss, unless such time is extended in writing by this Company, shall render a statement to this Company signed and sworn to by the Assured, stating the place, time and cause of the loss or damage, the interest of the Assured and of all others in the property, the sound value thereof and the amount of loss or damage thereon, all encumbrances thereon, and all other insurance whether valid or not covering said property; and the Assured, as often as required, shall exhibit to any person designated by this Company all that remains of the property insured and submit to examinations under oath by any person named by this Company, and subscribe the same; and as often as required, shall produce for examination all books of account, bills, invoice, and other vouchers, or certified copies thereof if originals be lost, at

such reasonable place as may be designated by this Company or its representative, and shall permit extracts and copies thereof to be made.

Appraisal.—In case the Assured and this Company shall fail to agree as to the amount of loss or damage, each shall, on the written demand of either, select a competent and disinterested appraiser. The appraisers shall first select a competent and disinterested umpire; and failing for fifteen (15) days to agree upon such umpire then, on request of the Assured or this Company such umpire shall be selected by a judge of a court of record in the County and State in which the property insured was located at time of loss. The appraisers shall then appraise the loss and damage stating separately sound value and loss or damage to each item, and failing to agree shall submit their differences only, to the umpire. An award in writing, so itemized, of any two when filed with this Company shall determine the amount of sound value and loss of damage. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by parties equally.

Payment of Loss.—This Company shall not be held to have waived any provision or condition of this policy or any forfeiture thereof by any requirement, act, or proceeding on its part relating to the appraisal, or to any examination herein provided for; and the loss shall in no event become payable until sixty (60) days after the notice, ascertainment, estimate and verified proof of loss herein required have been received by this Company and if appraisal [fols. 64 & 64½] is demanded, then not until sixty days after an award has been made by the appraisers.

Subrogation.—This Company may require from the Assured an assignment of all right of recovery against any party for loss or damage to the extent that payment therefor is made by this Company.

Suit Against Company.—No suit or action on this policy for the recovery of any claim hereunder shall be sustainable in any court of law or equity unless the Assured shall have fully complied with all the foregoing requirements, nor unless commended within twelve (12) months next after happening of the loss; provided that where such limitation of time is prohibited by the laws of the State wherein this

policy is issued, then and in that event no suit under this policy shall be sustainable unless commenced within the shortest limitation permitted under the laws of such State.

This Policy is made and accepted subject to the provisions, exclusions, conditions and warranties set forth herein or endorsed hereon, and upon acceptance of this policy, the Assured agrees that its terms embody all agreements then existing between himself and the Company or any of its agents relating to the insurance described herein, and no officer, agent or other representative of this Company shall have power to waive any of the terms of this policy unless such waiver be written upon or attached hereto, nor shall any privilege or permission affecting the insurance under this policy exist or be claimed by the Assured unless so written or attached.

[fol. 65] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION OF FACTS—August 22, 1925

Proceedings in the Above entitled Cause Before Hon. Evan A. Evans, Circuit Judge, and Hon. C. Z. Luse and Hon. F. A. Geiger, District Judges, at Superior, Wisconsin, August 22, 1925.

It is understood and agreed between the parties that this stipulation shall apply to both cases (Chrysler Sales Corporation vs. W. Stanley Smith and Clark Motor Company vs. W. Stanley Smith).

It is agreed that it may be considered that the defendant has filed in the case of Clark Motor Company a verified answer containing substantially the same allegations as are contained in the verified answer in the case of the Chrysler Sales Corporation which has just been served this morning.

It is also stipulated that there may be deemed to be added to the complaint in each case the matters set up in the affidavit of B. E. Hutchinson filed in each such case today.

It is conceded that the Chrysler Sales Corporation is not licensed to do business in the State of Wisconsin.

Oral arguments were made following the foregoing.

[fol. 66] Reporter's certificate to foregoing paper filed January 5, 1926, omitted in printing.

[File endorsement omitted.]

[fol. 67] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER—Filed August 22, 1925

The above named defendant in answer to the bill of complaint in the above action admits, denies and alleges as follows:

1. Admits the allegations in paragraph 1 of the complaint.

2. Admits the allegations in paragraph 2 of the complaint.

3. Admits the allegations as to the citizenship of the respective parties as alleged therein and that it is claimed that the cause of action arises under the constitution and laws of the United States but denies that any such question is involved.

4. Admits the allegations of paragraph 4 of the complaint.

5. Admits the allegations in paragraph 5 as to the plaintiff's being engaged in the business of making and selling automobiles throughout the United States and the State of Wisconsin and other places. As to the expense of such business, the defendant has no information.

6. Answering the allegations in paragraph 6 of said bill of complaint the defendant admits that the plaintiff has been transacting business selling and distributing auto-
[fol. 68] mobiles in the state of Wisconsin and elsewhere and denies any information or knowledge as to the amount or extent of such business.

7. In answer to the allegations in paragraph 7 of said bill of complaint, this defendant admits that the Palmetto Fire Insurance Company of South Carolina was licensed

to do insurance business in the State of Michigan, but alleges that it was not licensed to do such insurance business in the State of Wisconsin but denies that it was not doing such insurance business in the State of Wisconsin, and admits the execution and issuance of the general contract and policy, a copy of which is attached to said bill of complaint and marked Exhibit A, but denies that the same was to be performed in the State of Michigan or that it was a Michigan contract or policy as to the automobiles sold in the State of Wisconsin and alleges that the so-called certificate of insurance issued to the Wisconsin purchasers of cars were and are the insurance policies and contracts of insurance in Wisconsin and as so issued and delivered is the transaction of insurance business in Wisconsin.

8. Defendant admits and alleges that it was a part of said insurance contract and plan of doing business that whenever an automobile was sold and delivered in the State of Wisconsin, a so-called certificate in the form attached to said complaint was to be and was issued to the purchaser of such automobile, which defendant alleges was in effect an insurance policy and contract insuring the purchaser's automobile against the risks set out in such certificate and policy contract and defendant admits and alleges that such certificates and policy contracts were in fact, and were intended to be insurance policies and contracts issued as in- [fol. 69] surance policy contracts on property located in the State of Wisconsin and were so issued and delivered in Wisconsin without being signed by or delivered or issued by or through a resident agent as required by the laws of Wisconsin and defendant alleges that no books or records of such insurance contracts were made or kept by an agent or in any other manner in any office in the State of Wisconsin as required by law. Defendant denies that under said plan, only the plaintiff pays or is liable to pay the premium on said policies and alleges the fact to be that each of the purchasers of such cars in the State of Wisconsin is charged and pays for such certificate or policy contract a premium which is charged in and is a part of the cost and purchase price of such automobiles, and which insurance premium is paid by the purchasers of such automobiles in Wisconsin as a part of the purchase price of such automobiles. Defendant alleges that such plan and scheme was devised and is being so carried out as a conspiracy for the express pur-

pose of evading the laws of Wisconsin and attempting to avoid the necessity of paying a license fee and obtaining a license for the transaction of such business under the laws of Wisconsin and to avoid the necessity of keeping books and records in the State of Wisconsin as required by the laws of the state and to prevent the insurance commissioner from having any knowledge of or supervision over such business or the method of its transaction, which defendant alleges was the purpose of such laws.

9. In answer to the allegations in paragraph 9 of the said bill of complaint, the defendant admits and alleges that if the plaintiff or said insurance company can transact such insurance business in the state of Wisconsin as alleged in said bill of complaint, without having to pay a license fee [fol. 70] and obtaining a license and subjecting itself and such business to the laws of Wisconsin for the conducting of an insurance business in this state, it can afford to do such business cheaper and furnish such insurance at a lower rate than a responsible company could do who has paid the required license fee and who maintains agents in the State of Wisconsin and does such business in accordance with the laws of the state. But defendant alleges that that is no excuse or justification for doing such business in violation of the laws of the State which were made in part for the protection and benefit of the persons insured.

In further answer to said allegations, defendant denies that the insurance on such automobiles in the state of Wisconsin comes into effect under the Michigan contract as a Michigan contract and alleges the fact to be that said so-called Michigan policy of insurance has no effect and does not insure such cars in Wisconsin but the scheme and plan of doing business under such arrangement makes the said alleged certificate a separate insurance contract or policy of insurance in Wisconsin as to each car when the same is so issued and delivered to the purchaser of such cars in Wisconsin, and because they are so issued without the payment of a license fee and without the signature of a local or resident agent, on such insurance contracts, the same are unauthorized, illegal and are so issued in violation of the laws of this state. And whether purchasers for cash are charged the same price as purchasers on credit, is not material and does not change the character of said transaction or make said business legal under the laws of Wisconsin.

10. In answer to the allegations in paragraph 10 of said [fol. 71] bill of complaint, defendant denies that under said scheme, the dealers in such cars are in no way agents of the plaintiff. Defendant alleges that whether the business is conducted direct or in the manner set forth in said allegations, the fact remains that such scheme and plan was gotten up and is being used and such business is so carried on in violation of the provisions of the Wisconsin Statutes and it was so intended to evade and nullify said laws and avoid the necessity of employing agents in Wisconsin, paying license fees and obtaining a license under the laws of the state of Wisconsin, and submitting such business to the supervision of the insurance commissioner of Wisconsin. Defendant further alleges in answer to the allegations of paragraph 10 of said bill of complaint, that when the so-called certificate alleged therein is delivered to the purchaser of such cars in Wisconsin, it becomes and is, in effect, an insurance policy and contract of insurance issued on such car in the State of Wisconsin, without a license and without the signature of a local or resident agent thereon, and is so done in violation of the laws of Wisconsin.

11. In answer to the allegations in paragraph 11 of said bill of complaint, defendant denies that the so-called dealer or distributer in Wisconsin takes no part in writing or placing or in the payment of insurance in Wisconsin and alleges the fact to be that under said plan, every such sale of an automobile is a sale of insurance in Wisconsin and every so-called certificate so issued and delivered is intended to be and is in effect an insurance policy and contract of insurance and is the transaction of insurance business in Wisconsin within the provisions of the Wisconsin Statutes and one of the inducements and considerations for the sale of such automobiles under such plan is the fact that the pur- [fol. 72] chase price fixed for the sale of the automobile includes the insurance covered by the insurance policy certificate without any additional consideration and the plaintiff and insurance company receives such consideration as a part of the purchase price of such cars. Defendant denies the allegation that neither the distributor nor the dealer receives any commission or other compensation in any form on or by virtue of the insurance protection afforded to the retail purchaser and alleges the fact to be that the cost of

such insurance is included in and is a part of the consideration for the purchase of such cars and is an inducement for making such sales and purchases.

12. In answer to the allegations in paragraph 12 of said bill of complaint, the defendant admits that Chrysler cars are being sold in large numbers in Wisconsin under such plan and defendant alleges that such business has been so increased in part because it includes the issue of such insurance policy certificates as a part of the purchase price of such automobiles which defendant alleges is doing and transacting insurance business in the State of Wisconsin on property in the state without a license therefor and without such policy contracts being signed by an agent or delivered by or through an agent in the state of Wisconsin, and without any record thereof being made or kept in Wisconsin, as required by law.

Further answering the allegations in paragraph 12 of said bill of complaint, defendant admits that he has ruled and held and still holds that the said plan of doing such business in the State of Wisconsin is the transaction of insurance business in Wisconsin in violation of the laws of Wisconsin and defendant admits that he has threatened to enforce the provisions of the Wisconsin Statutes as to the transaction of said insurance business in the State of Wisconsin without the payment of a license fee and the obtaining of a license therefor as provided by the law of this state so that he can have supervision over such business.

[fol. 73]

Defendant denies that the purchasers of such cars in Wisconsin, under such plan and method of doing business, are protected by or insured under the contract made in Michigan as alleged in such paragraph, and alleges the fact to be that such alleged certificate which is so issued to the purchaser of such cars in Wisconsin is the insurance contract and policy of insurance which is delivered in accordance with such plan direct to the insured purchaser of such cars in the state of Wisconsin and is so issued as an insurance contract and policy of insurance on property in the State of Wisconsin for the benefit of the resident owners in Wisconsin and is so done without any license fee having been paid or license issued or obtained therefor. Defendant admits and alleges that he has advised the dealers and agents of such cars and plaintiff and the said Palmetto Fire Insurance Company that they are violating the laws of Wis-

consin by doing such business in the state of Wisconsin and that he will enforce such laws.

Defendant alleges that he took such action because he considered it was his duty under the laws to so act and that he so acted as soon as he learned of the methods of conducting said business although he is now advised that a large amount of said business has been so done without any license and in violation of the laws of Wisconsin.

Defendant denies that tthe plaintiff had no adequate [fol. 74] remedy at law and alleges that it has full and complete remedy, and alleges that under the terms of its policy contract it can and should compel said insurance company to qualify and do such business as required by the laws of the State of Wisconsin.

13. In answer to the allegations in paragraph 13 of said bill of complaint, defendant denies that his threats or actions have been or are unlawful and without sanction or support in the laws of Wisconsin, and denies that neither the plaintiff nor any dealer or distributer of Chrysler cars in Wisconsin is violating or threatening to violate the laws of the state of Wisconsin, and alleges the fact to be that both the plaintiff and its dealers and distributers and the purchasers of cars in the state of Wisconsin under said plan become and are parties to said illegal plan and method of carrying on and conducting and transacting such insurance business in Wisconsin by so issuing contracts of insurance to residents of Wisconsin as insurance upon their automobiles in Wisconsin and doing such insurance business in the State of Wisconsin without any license therefor and without such insurance contracts being signed by or issued through or by a resident agent in Wisconsin and denies that the statutes of Wisconsin, properly construed, have no application to the acts of plaintiff and its distributers and dealers of such cars in Wisconsin, and alleges that such business is in violation of such laws.

14. In answer to the allegations in paragraph 14 of the plaintiff's bill of complaint, defendant denies that said insurance laws of Wisconsin are unconstitutional or void and denies that said laws deny to the plaintiff and its distributors or dealers or to said insurance company the equal protection of the laws within the meaning of the Federal Con- [fol. 74½] stitution and denies that such insurance laws at-

tempt to illegally regulate, prohibit, or burden the making of a performance of contracts of insurance in Wisconsin, and denies that said alleged contract is made and to be performed outside the limits of the state of Wisconsin and not subject to the laws of this state, and defendant denies that his rulings and actions as insurance commissioner are or have been illegal or unconstitutional.

15. In answer to the allegations of paragraph 15 of said bill of complaint, defendant denies that the plaintiff is without remedy in the premises except in a court of equity.

Further answering said bill of complaint, defendant alleges that the Palmetto Fire Insurance Company is the real party in interest and a necessary party in said action.

For further answer to said bill of complaint, defendant alleges that such policy purports to be issued in and by virtue of the laws of Michigan, but defendant alleges that it does not conform to the form of standard insurance policy prescribed by either the laws of Michigan or Wisconsin and the whole plan and scheme is without authority of either state and is illegal, unlawful and void.

For further answer to said bill of complaint, defendant alleges that this plaintiff in carrying out its said plan of business, is selling insurance and insurance contracts in Wisconsin and is a party to such plans of selling and transacting an insurance business in Wisconsin without a license and in violation of the insurance laws of Wisconsin.

Defendant alleges that said method, plan and scheme of conducting, carrying on and transacting such business in Wisconsin and other states in such manner was and is illegal and the results of and is an illegal conspiracy by and between plaintiff, the said Palmetto Fire Insurance [fol. 75] Company, the Chrysler Corporation and the distributers and purchasers of such automobiles in Wisconsin, to evade the laws of Wisconsin and that such business is being so carried on in Wisconsin in accordance with such illegal conspiracy and plan and in violation and defiance of the laws of Wisconsin and is unlawful.

Defendant further alleges that the plaintiff in this suit is not a citizen of the United States nor of any state in the United States and is, therefore, not entitled to the rights of citizens as guaranteed by the Fourteenth Amendment to the constitution of the United States.

For further answer to said bill of complaint, defendant denies each and every allegation therein not herein admitted.

Wherefore, Defendant prays that no temporary injunction be issued in this action pending the trial and disposition of the same and that said action be dismissed with costs to defendant.

Herman L. Ekern, Attorney General; T. L. McIntosh, Assistant Attorney General, Attorneys for Defendant.

[fols. 76 & 76½] *Duly sworn to by W. Stanley Smith. Jurat omitted in printing.*

Service admitted Aug. 21, 1925, H. M. Wilkie.

[File endorsement omitted.]

[fols. 77-79] Summons and marshal's return filed Aug. 5, 1925, omitted in printing.

[fol. 80] In United States District Court

[Title omitted]

Order to Appear for Hearing and Temporary Restraining Order—Filed August 3, 1925

Plaintiff having applied for a temporary injunction restraining defendant as prayed in the duly verified bill of complaint and it appearing that such injunction, if granted, may suspend or restrain the enforcement of a state law by restraining the action of a state officer, on the ground of the unconstitutionality of said statutes, if such statutes should be construed as claimed by defendant, and if said statutes prohibit the acts and practices of plaintiff and customers of plaintiff as set out in said complaint, and it appearing from specific facts alleged in said verified bill that immediate and irreparable loss and damage will result to applicant, the plaintiff herein, before the matter can be heard on notice, and it appearing from said complaint that plaintiff is prima

facie entitled to interlocutory injunction as prayed, and it further appearing that the defendant is issuing declarations and statements to the effect that plaintiff and plaintiff's customers are violating the criminal and civil laws of Wisconsin and are subjecting themselves to heavy fines, forfeitures and penalties; and that said defendant is threatening to immediately cause the arrest and prosecution of distributors and dealers selling plaintiff's products in Wisconsin and that said declarations, statements and threats have already had serious effect on, and are causing irreparable injury to plaintiff's property and business, and that such arrests and prosecution would cause irreparable injury to plaintiff and plaintiff's property before any hear- [fol. 81] ing or notice can be had in this matter by causing great loss of customers, dealers and good will and disruption of sales organization.

Now therefore, on motion of plaintiff, it is ordered, that defendant appear on August 22nd, 1925, at 10:00 o'clock a. m., or as soon thereafter as counsel can be heard, or at such other times as may hereafter be duly set as the time for the hearing of said application, at the court room of the above named court, in Superior, Wisconsin, and there show cause why the interlocutory injunction in said bill of complaint prayed for should not issue and I hereby call to my assistance to hear and determine the application, two other judges, to-wit: Hon. Evan A. Evans, Circuit Judge, and Hon. F. A. Geiger, District Judge.

Further ordered, that a copy of the Bill of Complaint be served on defendant at the time of the service of this order.

Further ordered, that at least five days' notice of said hearing on application for temporary injunction be given to the Governor and to the Attorney General of the State of Wisconsin and to the defendant in this action.

Further ordered, that for the reasons and on the grounds hereinbefore stated, a temporary restraining order is hereby granted without notice, to be in effect only until further order of the court and in any event to be in effect no longer than the time of the hearing and determination of said application for temporary injunction. The restraining order shall not be effective until there is filed with the clerk a bond executed by sureties approved by the clerk in the sum of $1,000.00 conditioned upon the payment of such costs and

damages as may be incurred or suffered by any party who may be found to have been wrongfully restrained or enjoined thereby. A copy of said bond shall be served with [fols. 82 & 82½] the service of this order.

Therefore, it is ordered that until the further order of this court, or until the hearing and determination of said application for temporary injunction, defendant and his deputies, agents and employes, and all persons acting under him, be and they are hereby [restrained and enjoined from bringing or causing to be brought, or threatening to bring or cause to be brought any prosecutions or actions or proceedings for recovery of penalties or forfeitures against plaintiff, or against any dealers in or distributors of Chrysler Cars in Wisconsin, or the servants, agents or employes of them or any of them, based on or purporting to be based on or by reason of the contract of insurance made between Chrysler Sales Corporation and Palmetto Fire Insurance Company, dated June 16, 1925, whereby purchasers at retail of Chrysler cars in Wisconsin, and other parts of the United States, and other persons interested in said cars are protected in respect to loss on said cars by fire or theft, or based on or purporting to be based on or by reason of the sale of Chrysler cars Wisconsin, and the collection of the full purchase price thereof, including delivery and other charges according to the present method of selling said cars in Wisconsin, or by reason of the protection afforded purchasers of said cars in Wisconsin under said contract of insurance and from publishing or circulating statements that plaintiff or the dealers in or distributors of Chrysler cars in Wisconsin are violating the Wisconsin law or are acting as insurance agents contrary to law or otherwise.]

Dated August 3rd, 1925.

C. Z. Luse, District Judge.

[File endorsement omitted.]

[fols. 83 & 83½] Bond on restraining order for $1,000 approved and filed Aug. 3, 1925 omitted in printing.

[fols. 84 & 84½] In United States District Court

[Title omitted]

Application for Hearing and Motion for Temporary Restraining Order—Filed Aug. 3, 1925

To the Honorable, the Judge of the District Court for the Western District of Wisconsin:

Now comes plaintiff above named and makes this, its application for a hearing in this cause for an interlocutory injunction in accordance with Section 266 of the Judicial Code of the United States, as amended by the Act of Congres approved March 14, 1913; and plaintiff further files this, its motion for the issue of a temporary restraining order to remain in force until the application for said interlocutory injunction can be heard and determined, for the reasons and on the grounds set forth in its Bill of Complaint, and to prevent irreparable loss and damage to plaintiff.

Ralph W. Jackman, Harold M. Wilkie, Oscar T. Toebaas, Solicitors for Plaintiff.

Larkin, Rathbone & Perry, of Counsel.

[File endorsement omitted.]

[fols. 85-87½] Notice of hearing on motion for temporary injunction with proof of service omitted in printing.

[fol. 88] In United States District Court

[Title omitted]

Opinion—Filed Nov. 18, 1925

Hearing on Application for Preliminary Injunction, Before Evans, Circuit Judge, and Geiger and Luse, District Judges:

Luse, District Judge:

Complainant, a Michigan corporation, seeks to enjoin defendant from publicly asserting that insurance issued by the

Palmetto Fire Insurance Company, a corporation of South Carolina, to Wisconsin residents owning Chrysler automobiles sold in Wisconsin, is so issued contrary to the laws of Wisconsin and from threatening to prosecute Wisconsin dealers in Chrysler cars for violating Wisconsin statutes regulating the insurance business within the state to the irreparable damage to plaintiff's business in the sale of Chrysler cars in Wisconsin. Complainant avers that the Wisconsin statutes, properly construed, do not apply to the situation and if they do, they are unconstitutional upon various grounds and particularly under the due process clause of the Fourteenth Amendment. The application was heard on the pleadings, supplemented by affidavits.

Prominent among the state statutes which merit consideration, are the following:

Sec. 201.41 (1), Wis. Sts.:

"No insurance corporation shall transact any insurance business in this state without first having paid the license [fol. 89] fees, and obtained the license therefor as required by law."

By sub-section 2 of that section each such company is required to file a statement that it desires and will accept a license within the state, revocable in case of violation of law or certain impairment of its capital; appoint the Commissioner of Insurance its attorney in fact for service of process. The section also requires the insurer to file a copy of its charter and evidence that it has a certain capital and has deposited either in this state or where domestic a certain amount in approved securities.

Sec. 201.44:

"(1). No policy of insurance shall be issued or delivered in this state by any company, except through an agent who shall be a resident of this state and hold a certificate of authority under section 209.04, for the kind of insurance effected by such policy.

"(5). Any company or person soliciting or placing insurance without complying with this section shall, in addition to other penalties provided by law, be liable personally upon such policy or contract of insurance to the same extent as the company issuing the same."

A penalty is provided for violation of this section.

Sec. 209.04:

"(1). No person, officer, or broker, agent or subagent of any insurance corporation of any kind required to pay any tax or license fee to the state shall act or aid in any manner in transacting the business of or with such corporation in placing risks or in collecting any premiums or assessments or effecting insurance therein, without first procuring from the insurance corporation a certificate of authority; nor shall any such person officer, broker, agent, or subagent, after such certificate shall have expired, or after revocation by the commissioner of insurance of such certificate or of the license of such corporation and until a new certificate or license shall have been issued to him, do or perform any such act for or in behalf of any insurance corporation. The exceptions herein shall not apply to mutual insurance corporations or fraternal societies not maintaining a lodge system which corporations or societies issue only policies of health or accident insurance or both.

"(4). Any person violating the provisions of this section shall be punished by a fine of not more than five hundred dollars for each offense. Any company violating subsection (2) of this section shall pay five times the amount of fees upon each license included in such violation.

[fol. 90] Section 209.05:

"Every person or member of a firm or corporation who solicits insurance on behalf of any insurance corporation or person desiring insurance of any kind, or transmits an application for a policy of insurance, other than for himself, to or from any such corporation, or who makes any contract for insurance, or collects any premium for insurance, or in any manner aids or assists in doing either, or in transacting any business of like nature for any insurance corporation, or advertises to do any such thing, shall be held to be an agent of such corporation to all intents and purposes, unless it can be shown that he received no compensation for such services. This section shall not apply to agents of licensed fraternal beneficiary societies, or mutual fire insurance companies of this state except those organized under sections 201.02, 201.04 and 201.16."

Sec. 348.488:

"Any unauthorized insurance company or other unauthorized insurer which shall hereafter take or receive any application for insurance in this state, or shall receive or collect a premium on any part thereof for such insurance, shall be punished by a fine of not more than five thousand dollars. Any officer, agent, solicitor, or broker, or other employe of any unauthorized insurance company or other unauthorized insurer who shall take or receive any application for insurance in this state, or shall receive or collect a premium or any part thereof for such insurance, shall be guilty of a felony, and shall be punished by a fine of not more than five hundred dollars, or imprisonment in the state penitentiary for one year, or by both such fine and imprisonment."

By virtue of these provisions of the Wisconsin law, among others, defendant claims that the Palmetto Fire Insurance Company and the Wisconsin dealers in Chrysler cars are violating the laws of Wisconsin and are amenable thereto as he has claimed.

The facts disclosed by the record or reasonably inferable therefrom are as follows:

Complainant is a Michigan corporation engaged in buying all of the automobiles manufactured by the Chrysler Motor Corporation and selling them at wholesale throughout the United States to distributors and dealers of whom there are some three thousand in the country and one hun- [fol. 91] dred thirty in the state of Wisconsin. It has established this sales organization at great expense and its success depends in part on its ability to retain these distributors and dealers for the continuance of sales, which during the first half of 1925 exceeded one half million dollars in the state of Wisconsin. It appears that a large percentage of automobiles sold at retail in this country are sold on the deferred payment plan, the deferred payments being evidenced by promissory notes, secured by lien on the car sold, and usually assigned by the dealer to some bank or finance company which requires that insurance against fire and theft be taken out for the protection of the owner and itself from loss through those hazards. The result, so complainant alleges, has been that such banks or finance

companies have been required to maintain organizations to collect deferred payments, watch the cars against improper disposition before final payment, etc., with the further result that the cost of financing, which is invariably borne by the retail purchaser, is not uniform, usually high and often excessive. One element making for uniformity and cheapness in financing is cheap insurance and to secure that for the benefit of the retail purchasers, complainant, on June 16, 1925, entered into a contract, called in the bill an "open policy," with the Palmetto Fire Insurance Company, a South Carolina corporation, not admitted to do business in Wisconsin, and Commercial Credit Company, a Delaware corporation, the legal effect of which, together with an interpretation of the acts of the Wisconsin dealers thereunder, present the main questions in controversy. A new contract was entered into between the parties on Aug. 4, 1925, the day after this suit was commenced, modifying and clarifying to some extent the contract of June 16, but making no substantial change in the nature of the questions presented.

The purpose of the contract of June 16, is stated therein as follows:

[fol. 92] "Crrysler desires to increase the retail sale of Chrysler cars and to obtain for dealers a uniform maximum rate for financing retail sales and to provide insurance at a uniform maximum rate throughout the entire United States for the benefit of purchaser and/or other parties mentioned in the policy and certificates as their respective interests may appear on each Chrysler car purchased at retail. Chrysler proposes to advertise throughout the United States the benefits resulting to purchasers from insurance under policy and certificates issued hereunder. Commercial Credit desires to obtain so far as possible the financing of the retail sales of Chrysler cars. Insurer desires to obtain insurance in respect to all Chrysler cars sold and leased and delivered at retail to purchasers by dealers throughout the United States during the term of this policy."

By the terms of the contract Palmetto Fire Insurance Company insures "Chrysler Sales Corporation and/or for account of whom it may concern, as specified, against loss by fire or theft to the automobiles described for a period

commencing at noon July 1, 1925, and ending at noon July 1, 1926, but all certificates issued thereunder remain "in full force and effect for the term specified in such certificates." The amount of premium is not stated except "as specified," evidently referring to an undisclosed collateral agreement. Usual warranties as to the occupation or business of the assured, the uses to which the automobile will be put, and the place where same is kept, are waived by the insurer. The existence of any lien or mortgage does not vitiate the insurance. Liability of the insurer is limited to the actual cash value of the property at the time of any loss or damage, which loss or damage is to be ascertained or estimated with proper deduction for depreciation, the usual provision with regard to proof of loss within sixty days is present and likewise a provision for appraisal of the amount of loss or damage in case the assured and the insurer shall fail to agree thereon. Coverage is for 100% of the list price of each Chrysler car, F. O. B. Detroit, on date of purchase at retail, limited, however, as already indicated to the actual cash value at the time of [fol. 93] loss; coverage under the contract and under certificates to be issued is provided to be "automatically effective from the date on which (during the term of this policy) each purchaser takes delivery of a Chrysler car or receives a bill of sale of a Chrysler car, whichever shall be the earlier, and shall attend in respect to such Chrysler car for a period of tweve months." The purchaser is defined as one purchasing or agreeing to purchase Chrysler cars at retail. No car is insured which on July 1, 1925, was in the possession of or in transit to any dealer or distributor unless reported by Chrysler Sales Corporation to the insurer. The insurer is required to issue certificates to any purchaser at retail in the form attached to the policy and the insurance evidenced by the contract and certificate is not subject to cancellation by either party. If the automobiles are financed, that is, sold on deferred payments secured by lien upon the car, a duplicate of such certificate is furnished to the finance companies financing the purchase. It is agreed, however, that all cars shall be automatically covered as provided in the contract notwithstanding the failure or omission to apply for or issue a certificate or the failure to report to the insurer any car as re-

quired by the policy. In cases where the purchaser takes out other insurance upon his car and the Palmetto Fire Insurance Company disclaims liability on that account, coverage under the contract is provided to operate as excess insurance, not to apply to any loss until recovery from such other insurance shall have been exhausted. The Chrysler Company is obliged to send original detailed reports to Commercial Credit Corporation and a duplicate thereof to the insurer of Chrysler cars in the possession of or in transit to its distributors and/or dealers and unsold on July 1, 1925, upon which insurance is desired under the con- [fol. 94] tract. It is also required to send each month on or before the 15th day reports to the same parties of the cars shipped to its dealers and distributors throughout the United States during the preceding calendar month. The agreed premiums are to be paid by Chrysler Sales Corporation for the insurance provided for and are paid by the Chrysler Corporation to the Commercial Credit Corporation or any insurance broker designated by the latter on or before the 15th day of each month for all Chrysler cars reported by the distributors and dealers of the Chrysler Sales Corporation as sold and/or leased during the preceding month and which are insured, and a report of such cars in detail is required to accompany such remittance. Commercial Credit Corporation is required to remit or cause the insurance brokers designated by it to remit the insurance premiums on or before the 25th day of each month to the agents of the Palmetto Fire Insurance Company at Baltimore, Maryland. Commercial Credit Corporation guarantees the payment of such premiums. Payment of all losses claimed are to be made

"to purchaser unless the purchase of any Chrysler car has been financed, in which case payment of all losses shall be made to Commercial Credit, Affiliated Companies or other finance companies or dealers (meaning all who have advanced deferred payments on behalf of the purchaser and taken security therefor) financing the same for the account of all parties as their respective interests may appear."

The form of certificate attached to the contract recites in effect that pursuant to the contract between the Chrysler Sales Corporation and the Palmetto Fire Insurance Com-

pany, the new Chrysler car sold and delivered to the purchaser whose address is given and which car is specifically described, is insured against loss or damage from the perils insured against for a period of one year, with specific dates, for a sum stated, being the list price of the car including standard factory equipment, F. O. B. Detroit. The certifi-
[fol. 95] cate asserts that the interests of the Chrysler Sales Corporation and/or of purchasers, owners, dealers, persons, etc., or others having an insurable interest, are protected with the same force and effect as if they severally accepted the same. The loss, if any, is to be adjusted with the purchaser but to be paid subject to all conditions of this certificate only to the person named in the certificate who holds the lien or mortgage upon the car "for account of all interests". It is provided in the certificate that it shall not be valid until countersigned by the duly authorized agent at Detroit, Michigan.

It is averred by complainant that whether a Chrysler car is sold at retail for cash or on time, the price is the same except for the charge made for financing the deferred payments which have heretofore varied but which under the plan devised by complainant has become 8% upon the unpaid balance if the sale is on time. Nor may purchaser obtain his car at a less price whether or not he desires the protection of such insurance. The practice with respect to the sale of Chrysler cars is that the Chrysler Sales Corporation from time to time has fixed the list price of its cars and sells them to its distributors for a cash price computed as follows: List price, less a given discount, plus war tax and certain delivery charges. Freight is paid by the distributor. In computing the discount, there is not included the war tax or the delivery charge. On July 1, 1925, additions were made to the delivery charge on all models of Chrysler cars. The complaint, however, does not disclose whether this increase in the delivery charge corresponded in amount with the cost to the Chrysler Sales Corporation of the insurance premium which it would pay under the Palmetto contract or not but the inference is unmistakable that such was the fact. The distributor sells to the dealer on the same basis as the distributor has
[fol. 96] bought but allows a smaller discount on the list price. The dealer in turn sells to the retail purchaser at a price equal to the list price, plus freight, war tax and

delivery charge. The retail dealer reports to the complainant the name of the purchaser, date of sale, motor number, style, etc., on retail sales made and also the name of the person or corporation financing the purchase if made on time. Complainant notifies the agent at Detroit, Michigan, of the insurance company and he mails the certificate from his office in Detroit to the purchaser and duplicates to others who to his knowledge may have an interest in the car.

Complainant alleges, while defendant denies, that the distributors of and dealers in Chrysler cars are in no way agents of the plaintiff and that no dealer or distributor takes any part in writing or placing or in the payment for insurance under the Michigan contract. Nor, says complainant, does the distributor or dealer solicit, demand, receive or transmit any premium. The contention of the complainant is that as to those cars shipped and to be sold at retail in Wisconsin, as is true throughout the United States, they become the property of the dealer, for which he has paid a stated price and which he sells in Wisconsin at a stated price as his own property and not as the agent for any one and that the insurance becomes effective not by virtue of anything the dealer does but by virtue of the contract of June 16 last entered into in Michigan and that the insurance which becomes effective in the hands of the retail purchaser in Wisconsin becomes effective solely by virtue of the Michigan contract and that the sale of the cars in Wisconsin by the dealers cannot be properly construed as effecting any insurance which it claims becomes automatically effective by virtue of the Michigan contract. Most of these contentions are asserted as facts in the bill and denied by the defendant and are of course to be resolved [fol. 97] by a true construction and interpretation of the contract and the course of business thereunder, with the legitimate inferences to be made therefrom.

One of the important details of this contract and plan is that the effective date of the insurance is postponed until a car is sold at retail and until title has passed from, not only complainant, but, its distributors and dealers, and only takes effect upon a sale at retail and covers only the loss sustained by the retail purchaser and lien claimants whose claims grow out of the transaction of retail sale. When so sold, complainant claims, the insurance becomes auto-

matically effective, by virtue of the Michigan contract. Plainly the theory of complainant is that this insurance is something that attaches to and follows an automobile upon its course through the market, as though a part or accessory and that the dealer who sells the car has nothing to do with the insurance item,—he merely sells the car with all its equipment including the insurance. But this idea is erroneous for, at least, two reasons: (1) The insurance never had effective existence until the sale at retail, by its very terms, or, as it may differently be stated, it is only to be made operative by an act of the retail dealer and (2) the legal concept of insurance is that in the absence of special circumstances it does not attach to property but to persons. As said by Story, J., in Carpenter v. Providence Co., 16 Peters, 495, 503, quoting Lord Hardwick:

"The society are to make satisfaction in case of any loss by fire. To whom, or for what loss, are they to make satisfaction? Why! to the person injured, and for the loss he may have sustained, for it cannot properly be called insuring the thing, for there is no possibility of doing it, and therefore must mean insuring the person from damage."

A similar thought underlies the decision in Paul v. Vir-
[fol. 98] ginia, 8 Wall. 168, wherein Justice Field says, referring to insurance contracts:

"These contracts are not articles of commerce in any proper meaning of the word. They are not subjects of trade and barter offered in the market as something having an existence and value independent of the parties to them. They are not commodities to be shipped or forwarded from one state to another and then put up for sale."

And this thought has withstood numerous assaults as is indicated in N. Y. Life Ins. Co. v. Deer Lodge County, 231 U. S. 495. And so we conclude that the insurance feature of the sales of Chrysler cars in Wisconsin may not be treated as an appendage or bit of equipment of small relative cost, which passes with the transfer of the car, but must be approached as a contract between persons, the insurer and the insured, and in so far as an insurance results it must be viewed as a thing apart and distinct from the cars sold.

What is the effect of the postponement of the operative effect of the contract? In considering this question it should be borne in mind that we are not concerned in this suit with the validity of the contract as such, but rather, with the question of whether or not the insurance eventually effected under it is so effected in Wisconsin as to give the regulatory statutes of that state, opportunity to operate thereon.

The course of business so far as a Wisconsin dealer is concerned is that he sells a car located in Wisconsin to a Wisconsin purchaser and offers as an incident to the sale, the insurance in question; the car including the insurance, is accepted,—the purchaser pays the dealer for the car, including the insurance premium, and this all occurs between Wisconsin residents with reference to property located in Wisconsin. By the sale the dealer thus fixes the term of the insurance which runs for one year from the date of retail sale; he normally reports the sale to complainant who in turn reports it to the insurer and accom- [fol. 99] panies the report with a remittance of the premium. If the retail purchase is upon deferred payments, the dealer and purchaser arrange for some one to finance it, and he becomes a beneficiary, selected ordinarily but not necessarily in Wisconsin and finally a certificate is mailed at Detroit to the Wisconsin insured. The dealer in Wisconsin, clearly does these things in Wisconsin: 1. He sells the car, including the insurance; 2. He collects the price, including the premium (that he does not remit it, is of small moment, having already advanced it, receiving nothing for it); 3. He fixes the term of the insurance; 4. He selects the beneficiaries—purchaser and financier; 5. He notifies complainant of these details by mail. All these things, except the last are essentials to the completion of the insurance contract and bring it into actual existence and occur in Wisconsin, between residents of that state, the dealer acting with authority under the Michigan contract. On the oral argument a certificate said to be typical of those delivered to purchasers, was handed to the court, which bore the endorsement, "any Chrysler dealer will notify purchaser to whom notice of any such loss should be given." We are now informed that such endorsement is eliminated from all certificates which are being sent out. The endorsement quoted above was slightly confirmatory,

but its elimination does not detract from the relationship of the dealers to the insurance as the whole plan discloses it.

Having these facts in mind and the thought that insurance is a matter of contract between persons, we are confronted immediately by the fact that the Michigan contract is not an insurance in praesenti, but rather a contract to insure in the future. It is not intended to indemnify Chrysler, nor its distributors, nor dealers, though the property successively passes through them in unqualified [fol. 100] ownership. Properly construed, we deem the contract one for future insurance to indemnity the retail purchasers and through them those who finance the retail purchasers, all to be provided by using the Chrysler organization of distributors and dealers to secure the adoption of the insurance by the retail purchasers and lien holders. How, then, can it be said that what the dealer does in Wisconsin are mere collateral acts, where they operate to bring the insurance into effect for the first time—give it life—and only by those acts are those essentials of insurance, identity of insured, identity of property, term of the risk and payment of premium, consummated? When, in addition, it is considered that in effect the Chrysler dealers act as solicitors of insurance as an incident to the sale of automobiles, we have no doubt that the insurance received by each retail purchaser in Wisconsin is in fact consummated in that state. The contention of counsel that the insurance is effective whether the retail purchaser wishes it or not, is erroneous, we think, and based on the theory that the insurance is the subject of barter and sale and passes as does the wind-shield wiper, as an accessory, from the dealer to the purchaser. The analogy is incomplete, for reasons already stated, and also because the dealer never has the insurance to pass, but rather it springs into existence upon its acceptance by the purchaser. That such acceptance is practically assured by the practice of demanding its cost regardless of whether the purchaser desires the insurance or not, does not alter the fact. In our opinion, the insurance on cars sold by Wisconsin dealers, in Wisconsin to Wisconsin purchasers, is consummated within that state.

Among other facts which tend to support this conclusion, it may be borne in mind that by the Michigan contract it is

provided that "insurer shall issue certificates to purchaser [fol. 101] substantially in the form attached," while the course of business is to mail such certificate to the retail purchaser. It is evident that it is deemed of some importance that the retail purchaser receive the certificate as his visible evidence of indemnity and the course of business adopted indicates that delivery of the same to him is made in Wisconsin through the postal service as the agent of the insurer. Again, while it is contended that the retail dealer does not sustain an agency relation to any one and sells the car as his own property, the whole plan confidently assumes that the dealer will sell the automobile at retail and collect the price designated as the list price together with the freight and delivery charges, and more to the point, it is assumed that the retail dealer will make report of the sale of the car at retail for the purpose of furnishing the basis not only for the issuance of a certificate to the purchaser, but also—and this is no doubt of some importance to the insurer—for the purpose of determining the premiums which Chrysler shall be required to pay to the insurer.

We have not overlooked the fact that all of these acts performed by the dealer in Wisconsin are to him no doubt mere incidents in the larger transaction of selling an automobile, even though he stresses, as he probably does, the insurance feature in his "sales talk" nevertheless this does not make the insurance feature any the less an item which the state may, and in common with most, if not all, has seen fit to regulate.

Nor do we believe that the fact that the Michigan contract is written in favor of "Chrysler Sales Corporation and/or for account of whom it may concern," alters the conclusion indicated. The fact that the contract in question postpones the existence of any insurance until after the transactions in Wisconsin above outlined, differentiates [fol. 102] the contract here from any in the cases called to our attention or which an independent search has revealed. Even in those cases where insurance in praesenti exists and a change of ownership occurs, the insurance is enforced on behalf of those intended by that phrase "provided the person who ordered it had the required authority from the former, or they subsequently adopted it." Hooper v.

Robinson, 98 U. S. 536; Hagen v. Scottish Ins. Co., 186 U. S. 423; Waring v. Indemnity Co., 45 N. Y. 606. While it is held that adoption may be shown informally and may occur even after loss, it is clear that in those cases operative insurance did not await the selection and assent of one of those intended by the phrase "whom it may concern," nor was the term of the effective insurance fixed by the transaction with him. We do not intend to imply that there are no other serious questions presented by the contract and facts here, but laying those questions aside, we think the above considerations are sufficient to repel the idea that the phrase "whom it may concern" materially affects the question before us.

Enough has already been said, we think, to indicate that our view of the case at bar clearly distinguishes it from the case of Allgeyer vs. Louisiana, 165 U. S. 578, in which no question of agency was involved and wherein it was held the contract was "made outside of the state, to be performed outside of the state, although the subject was property temporarily within the state." P. 592. In the instant case the contract, and the only contract which actually affords effective insurance, is made in Wisconsin, to be performed there (Lumbermen's Ins. Co. vs. Meyer, 197 U. S. 407, P. 416) and the subject is property located there. Nor is Minnesota Association vs. Benn, 261 U. S. 140, in point for there the members who solicited new members were without authority to obligate it. In Aetna Life Insur- [fol. 103] ance Co. vs. Dunker, 266 U. S. 389, the Tennessee contract was in full force before the assured removed to Texas and what transpired thereafter was in fulfillment of the completely effective Tennessee contract. Nor are we dealing here with a case where a resident of Wisconsin has in another state entered into a contract with a foreign corporation, so that the laws of Wisconsin need be given extraterritorial force as was condemned in N. Y. Life Ins. Co. vs. Head, 234 U. S. 149. On the other hand our view is that notwithstanding it is quite different in its facts, the instant case comes squarely within the principles of Hooper vs. California, 155 U. S. 648, Nutting vs. Mass., 183 U. S. 553, and Penna. Lumbermen's Ins. Co. vs. Meyer, 197 U. S. 407.

Our attention has been called to the decisions of the

United States District Court for the southern district of Ohio and the United States District Court for the southern district of New York, both yet unreported, and rendered in actions brought by the Palmetto Fire Insurance Company to enjoin the revocation of its licenses to do business in the states of Ohio and New York by the respective superintendents of those states. In the Ohio case it was held that the statute of that state prohibiting an insurance company legally authorized to transact business in Ohio from writing, placing or causing to be written or placed, insurance upon property situated or located in that state, except through a legally authorized agent therein, who should countersign all policies and enter the payment of the premium upon his record, was a valid law so far as insurance corporations who had taken out licenses were concerned and that such a license might properly be revoked if the statute was violated. The question there passed upon is quite clearly not involved in the instant case. In the New York case the defendant superintendent of insurance was enjoined from revoking the license of the Palmetto Fire In-
[fol. 104] surance Company upon the ground, as we read the decision, that the New York statutes do not prohibit the transactions involved and that the transactions being valid in Michigan, and not made invalid in New York, no legal cause for cancellation of the license existed. In that opinion it is said:

"The policy which is issued at Detroit, Michigan, under the plan insures the Chrysler Sales Corporation on cars sold together with others who may have an interest therein, including the ultimate purchaser in New York, who pays no premium but can take advantage of the insurance if he chooses to avail himself of it. No renewal of the policy is allowed. It amounts to a gift of insurance for one year if the ultimate purchaser of a Chrysler car sees fit to avail himself of it."

It is apparent from a comparison of the foregoing quotation with what we have said that the New York court has arrived at a very different interpretation and construction of the contract and the course of business under it, from ours. That opinion has caused us to reexamine the grounds of our own construction, but we find ourselves unable to subscribe to that part of the opinion which underlies the

conclusion that the insurance provided under the plan for the retail purchaser is a gift which arises out of a Michigan transactions. With all due deference we adhere to the interpretation of the contract and the course of business thereunder, hereinbefore outlined.

The business done and to be done in Wisconsin under the plan in question, in our opinion, constitutes the transacting of business within the state and the Palmetto Company is one of those validly required to take out and pay for a license under Sec. 201.41 (1) of the Wisconsin statutes, quoted above.

It is contended that the Chrysler dealers are not agents of the insurance company and are not within the terms of the penal statutes under which defendant threatens prosecutions. Granting that they are not agents in the conventional sense, and probably do not regard themselves as [fol. 105] such, nevertheless that question must be determined by what they do in fact, its effect, whom they do it for and by what authority, and by such test they clearly act within Wisconsin to effect insurance for purchasers upon automobiles, on behalf of the Palmetto Company with authority. Granting, further, that such statutes must be strictly construed, we have no hesitancy in concluding that the Chrysler dealers in Wisconsin operating under this plan bring themselves within both the letter and spirit of Sec. 209.04 Wis. Sts. The word "person" in the section is not to be treated as surplusage and must be held to include those who, though not officers, brokers, agents or subagents in the legal sense, in an analogous capacity, perform for the insurance company the forbidden acts of aiding "in any manner in transacting the business of or with such corporation (one required to pay a license) in placing risks or in collecting any premiums or assessments or effecting insurance therein."

Whether other Wisconsin statutes validly apply is not necessary to decide, for from what has already been said it follows that the application for a preliminary injunction must be denied.

It is so ordered.

Evan A. Evans, Circuit Judge. F. A. Geiger, District Judge. C. Z. Luse, District Judge.

[File endorsement omitted.]

[fol. 106] In United States District Court

[Title omitted]

Judgment—November 18, 1925

Hearing in the above entitled matter having been heretofore held before Hon. Evan A. Evans, Circuit Judge and Hon. F. A. Geiger and Hon. C. Z. Luse, District Judges, on plaintiff's petition for a preliminary Injunction:

In open Court, Hon. C. Z. Luse, District Judge presiding, it was ordered that the application for preliminary injunction must be denied.

Plaintiff duly excepts and exceptions allowed.

Filed Opinion.

I hereby certify the above to be a true copy of the original entry on the minutes of the court proceedings in the United States District Court for the Western District of Wisconsin, at Superior, on the 18th day of November, 1925.

Herbert C. Hale, Clerk, by C. W. Bishop, Deputy.

[fol. 107] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 108] Clerk's return omitted in printing.

[fol. 109] In United States District Court

[Title omitted]

[File endorsement omitted]

Assignments of Error—Filed December 3, 1925

Plaintiff in connection with petition for appeal herein, presents and files therewith its assignment of errors, as to which matters and things it says that the order entered herein on the 18th day of November, 1925 is erroneous, to-wit:

First. That the court erred in refusing interlocutory injunction as prayed.

Second. That the court erred in refusing to hold invalid as in violation of the 14th Amendment to the Constitution of the United States and the full faith and credit clause of said Constitution (Article IV, Sec. 1) and impairment of contract clause (Article I, Section 10) of said Constitution, Section 203.07 Wisconsin Statutes 1923 declaring that all fire insurance contracts on property in Wisconsin shall be held to be made and effected within Wisconsin and prohibiting the making of any such contracts on property in Wisconsin directly or indirectly by any unlicensed company.

Third. That the court erred in holding that distributors of and dealers in Chrysler automobiles in Wisconsin selling in Wisconsin automobiles the purchases of which are protected by insurance contract effected in Michigan between the Chrysler Sales Corporation and Palmetto Fire Insur-
[fol. 110] ance Company as set out in complaint and doing acts incidental to such sales are violating the penal provisions of Wisconsin Statutes and particularly Section 209.04 Wisconsin Statutes 1923.

Fourth. That the court erred in holding that by virtue of the contract of insurance between Chrysler Sales Corporation and Palmetto Fire Insurance Company made in Michigan and the sale of Chrysler cars in Wisconsin by dealers in and distributors of Chrysler cars in Wisconsin and acts incidental thereto as set out in complaint, said Palmetto Fire Insurance Company is transacting an insurance business in Wisconsin and is subject to the tax provided for by Section 76.33 Wisconsin Statutes 1923 as amended by Chapter 372, Wisconsin Laws of 1925 and that said statute so imposing such tax is valid and not in violation of the Constitution of the United States.

Fifth. That the court erred in holding that dealers in and distributors of Chrysler cars in Wisconsin are agents of and for the Palmetto Fire Insurance Company in respect to business of that company transacted in the State of Wisconsin.

Sixth. That the court erred in refusing to hold that Section 4575s Wisconsin Statutes 1923 as amended by Chapter 375 Wisconsin Laws 1925 prohibiting any officer, agent, solicitor or broker or other employe of any unauthorized insurer from taking or receiving an application for insur-

ance in Wisconsin or receiving or collecting premiums does not apply to or prohibit any of the acts of dealers in or distributors of Chrysler cars described in complaint.

Seventh. That the court erred in refusing to hold that Section 209.04 Wisconsin Statutes 1923 has no application to dealers in and distributors of Chrysler automobiles in [fol. 111] Wisconsin.

Eighth. That the court erred in refusing to hold that Section 201.44 Wisconsin Statutes 1923 providing that no policy of insurance shall be issued or delivered in Wisconsin except through a licensed resident agent does not apply to acts of dealers in and distributors of Chrysler cars in Wisconsin.

Ninth. That the court erred in holding that by virtue of the acts and transactions of dealers in and distributors of Chrysler cars in Wisconsin described in complaint and contract made in Michigan between Chrysler Sales Corporation and Palmetto Fire Insurance Company and the operation of said contract said Palmetto Fire Insurance Company is unlawfully transacting an insurance business in Wisconsin in violation of Section 201.41 Wisconsin Statutes 1923.

Tenth. That the court erred in refusing to hold that the dealers in and distributors of Chrysler cars in Wisconsin are not violating any law of Wisconsin and that there is no Wisconsin law sanctioning or supporting the prosecutions and actions against such dealers and distributors threatened by defendant.

Eleventh. That the court erred in holding that the threatened acts of defendant W. Stanley Smith are supported and sanctioned by law and in refusing to hold that said threatened acts and proceedings are not supported by law but are contrary to law and beyond the power of defendant and threaten to cause irreparable injury and damage to plaintiff.

Twelfth. That the court erred in holding that Section 209.04 Wisconsin Statutes 1923 construed as prohibiting the acts of Chrysler dealers and distributors as set out in the complaint is a valid law and does not violate any provision of the Constitution of the United States.

Thirteenth. That the court erred in holding that by virtue of the facts set out in complaint the Palmetto Fire [fol. 112] Insurance Company is subject to tax by the State of Wisconsin in respect to premiums in the contract of insurance involved in this action and that liability to such tax exists and that the Wisconsin Statute imposing such tax is not in violation of the Constitution of the United Sates.

Fourteenth. That the court erred in refusing to hold that the statutes of the State of Wisconsin in so far as they may be construed as prohibiting or penalizing the acts of dealers in and distributors of Chrysler cars in Wisconsin are invalid as in violation of the Constitution of the United States in that such statutes so construed take the property of said dealers and distributors without due process of law and take the property of the plaintiff herein without due process of law and deny to said dealers, distributors and to plaintiff the equal protection of the law and prohibit the sale of plaintiff's product by independent dealers in Wisconsin by virtue of the fact that plaintiff has effected in Michigan a contract of insurance protecting and benefitting all retail purchasers of plaintiff's product thus attempting to penalize the making of a contract of insurance outside the State of Wisconsin and to lay a burden thereon and because said statutes so construed destroy and take away without due process the liberty of contract of said dealers and distributors being the customers of plaintiff in Wisconsin to the prejudice and destruction of plaintiff's business and because said statutes so construed violate the 14th Amendment to the Constitution of the United States, and also Article IV, Section 1 and Article I, Section 10 of said Constitution of the United States.

Fifteenth. That the court erred in refusing to hold that the threatened acts of the defendant would deprive plaintiff of its property without due process of law and deny plaintiff the equal protection of the law in violation of the [fol. 113] 14th Amendment to the Constitution of the United States.

Sixteenth. That the court erred in refusing to hold that in so far as Wisconsin Statutes are construed as prohibiting the acts of Chrysler distributors and dealers in Wisconsin, they impose a burden and prohibition on interstate commerce contrary to the Constitution of the United States.

Wherefore plaintiff prays that the order and decree may be reversed and that plaintiff may have an adjudication and decree in its favor.

Ralph W. Jackman, Harold M. Wilkie, Oscar T. Toebaas, Attorneys for Plaintiff.

[fol. 113½] Service of due notice of written assignment of errors admitted December 14, 1925.

Herman L. Ekern, T. L. McIntosh, Attorneys for Defendant.

[fols. 114 & 114½] Citation in usual form showing service on Herman L. Ekern et al., filed Dec. 15, 1925, omitted in printing.

[fol. 115] In Supreme Court of the United States

Statement of Points to be Relied Upon and Stipulation as to Parts of Record to be Printed—Filed February 2, 1926

It is hereby stipulated that the transmitting of the record in this action was delayed because of necessity for counsel on both sides to go over transcript and agree on corrections which have been made. Stipulated further that this case may be docketed at once if not already docketed.

Appellant states that in pursuance of rule ten of the United States Supreme Court it expects to rely on each and all of the assignments of error which are attached to the record filed in this case.

It is stipulated that the following parts of the record need not be printed and that same are not necessary for a consideration of the assignments of error or any of them:

(1) Omit Bond on Appeal, pp. 4 and 5, of Record, and insert:

"Here appears sufficient bond on appeal approved by district Judge."

(2) Omit Injunction bond on appeal, and Order Approving Same, pp. 11-13 of record, and insert:

"Here appears injunction bond on appeal conforming to injunctional order pending appeal and approval of same by district judge."

[fol. 116] (3) Omit Præcipe for the transcript on said appeal, pp. 14-16, of record, and insert in lieu thereof the following:

"Here appears Precipe for Transcript on said Appeal, and admission of due service thereof."

(4) Omit subpœna issued upon Bill of Complaint, and return thereof, pp. 77-79 of record, and insert in lieu thereof the following:

"Here appears subpœna duly issued upon the bill of complaint and the return thereof."

(5) Omit Bond on Restraining Order, p. 83 of Record, and insert in lieu thereof the following:

"Here appears Bond filed upon issuing of preliminary restraining order and approved by District Judge."

(6) Omit Notice to Defendant and to the Governor of the State of Wisconsin and the Attorney General of the State of Wisconsin of Application for interlocutory injunction and admissions of service of said notice at pp. 85-87 of Record, and insert in lieu thereof the following:

"Here appears Notice of Plaintiff herein to the defendant and likewise to the Governor of the State of Wisconsin and the Attorney General of the State of Wisconsin duly notifying him and them of the application of the plaintiff for an interlocutory or preliminary injunction, and also complete admissions of service of said notice which was duly given pursuant to section 266 Judicial Code."

It is further stipulated and agreed that if from oversight or omission any necessary part of the record be not thus printed that the appellant has the right to print, or may be required by the defendant in error to print, any further or additional portions thereof.

It is hereby stipulated and agreed that both appellant and appellee waive any right to further reduce or diminish

[fols. 117 117½] the printed record and request that the record be at once printed.

Dated January 29th, 1926.

Ralph W. Jackman, H. M. Wilkie, O. T. Toebaas, Counsel for Plaintiff and Appellant. Herman L. Ekern, Attorney General, Counsel for Defendant and Appellee.

[fol. 118] [File endorsement omitted.]

Endorsed on cover: File No. 31,661. Western Wisconsin D. C. U. S. Term No. 938. Chrysler Sales Corporation, appellant, vs. W. Stanley Smith, as Commissioner of Insurance for the State of Wisconsin. Filed February 1st, 1926. File No. 31,661.

APPELLANTS

BRIEF

IN THE

Supreme Court of the United States

OCTOBER TERM, 1926

CASE No. 273.

CHRYSLER SALES CORPORATION,
Plaintiff-Appellant,

v.

WILBUR D. SPENCER, as Commissioner of Insurance of the State of Maine,
Defendant-Appellee.

CASE No. 274.

UTTERBACK-GLEASON COMPANY,
Plaintiff-Appellant,

v.

WILBUR D. SPENCER, as Commissioner of Insurance of the State of Maine,
Defendant-Appellee.

CASE No. 286.

CLARK MOTOR COMPANY,
Plaintiff-Appellant,

v.

W. STANLEY SMITH, as Commissioner of Insurance of the State of Wisconsin,
Defendant-Appellee.

CASE No. 287.

CHRYSLER SALES CORPORATION,
Plaintiff-Appellant,

v.

W. STANLEY SMITH, as Commissioner of Insurance of the State of Wisconsin,
Defendant-Appellee.

ON DIRECT APPEAL FROM THE STATUTORY COURTS—UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WISCONSIN AND UNITED STATES DISTRICT COURT, DISTRICT OF MAINE, SOUTHERN DIVISION.

BRIEF FOR APPELLANTS
(Plaintiffs Below).

DUANE R. DILLS,
Counsel for Plaintiffs-Appellants.

Parkhill Press, Inc., 38 Thomas St., New York, U. S. A.

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APPENDIX.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1926

CASE No. 273.

CHRYSLER SALES CORPORATION,
Plaintiff-Appellant,

v.

WILBUR D. SPENCER, as Commissioner of Insurance of the State of Maine,
Defendant-Appellee.

CASE No. 274.

UTTERBACK-GLEASON COMPANY,
Plaintiff-Appellant,

v.

WILBUR D. SPENCER, as Commissioner of Insurance of the State of Maine,
Defendant-Appellee.

CASE No. 286.

CLARK MOTOR COMPANY,
Plaintiff-Appellant,

v.

W. STANLEY SMITH, as Commissioner of Insurance of the State of Wisconsin,
Defendant-Appellee.

CASE No. 287.

CHRYSLER SALES CORPORATION,
Plaintiff-Appellant,

v.

W. STANLEY SMITH, as Commissioner of Insurance of the State of Wisconsin,
Defendant-Appellee.

On Direct Appeal from the Statutory Courts—United States District Court, Western District of Wisconsin and United States District Court, District of Maine, Southern Division.

BRIEF FOR APPELLANTS.
(Plaintiffs Below).

Opinions Below.

Decision of the U. S. District Court for the Western District of Wisconsin (Case No. 286, R. 66; Case No. 287, R. 68) is reported in 9 Fed. (2d) 666.

The opinion of the U. S. District Court for the District of Maine, Southern Division (Case No. 273, R. 35; Case No. 274, R. 36) is reported in 9 Fed. (2) 674.

Jurisdiction.

Jurisdiction is claimed under Section 266 Judicial Code of the United States, as amended February 13, 1925.

The judgment of the United States District Court for the Western District of Wisconsin was rendered on November 18, 1925 (Case No. 286, R. 82; Case No. 287, R. 84); and the judgment of the court for the District of Maine, Southern Division, was rendered on January 4, 1926 (Case No. 273, R. 34; Case No. 274, R. 35).

The controverted issue is whether insurance coverage under a blanket policy on Chrysler automobiles constitutes a Michigan contract beyond the jurisdiction of the states, or Wisconsin and Maine contracts subjecting Chrysler dealers to the insurance regulatory statutes of the states.

All of the cases come before this court on direct appeal from the judgments of the statutory court of three judges provided for in Section 266 of the Judicial Code as amended by the Act of February 13, 1925 (Western District of Wisconsin and Southern Division of Maine). The courts denied after notice and hearing an interlocutory injunction to restrain the defendants-appellees (the Commis-

sioners of Insurance of the State of Wisconsin and the State of Maine respectively) from sending out threatening letters and communications accusing the plaintiffs-appellants and dealers in Chrysler automobiles in Wisconsin and Maine of violating the insurance laws of the States of Wisconsin and Maine respectively and announcing publicly that insurance on Chrysler cars was void; and from bringing or causing to be brought criminal prosecutions against the dealers in Chrysler automobiles in Wisconsin and Maine respectively, and civil actions for penalties, and from otherwise interfering with the sale of Chrysler cars in Wisconsin and Maine under the color of their offices as Commissioners of Insurance of Wisconsin and Maine respectively.

The bills of complaint filed by the plaintiffs-appellants in the actions in the Western District of Wisconsin and the Southern Division of Maine were substantially the same. The defendant-appellee, Commissioner of Insurance of Wisconsin, filed an answer to the bill of complaint in that action (Case No. 286, R. 54; Case No. 287, R. 58). No answer was filed to the bill of complaint in the action in the Southern Division of Maine.

Equitable relief was sought to prevent immediate and irreparable damage to plaintiffs-appellants in violation of the Fourteenth Amendment, Article I, Section 10, and Article IV, Section I of the Federal Constitution.

There is substantial agreement as to the material facts, but there is a sharp difference of opinion as to the inferences drawn from those facts. The decision of the court for the Southern District of New York (Palmetto Fire Ins. Co. *v.* Beha, not yet reported, but cited by this Court in Fidelity & Deposit Co. *v.* Tafoya, decided March 15, 1926 not officially reported but appears in 46 Sup. Ct. Reporter

331) and on rehearing (decision not yet reported, but for the convenience of the court it is printed in full in the appendix to this brief) conflicts with the decisions of the courts of the Western District of Wisconsin and Southern Division of Maine.

Pursuant to the order of the court for the Western District of Wisconsin allowing this appeal and continuing the restraining order against the Insurance Commissioner of Wisconsin (Case No. 287, R. 2-5), the plaintiffs-appellants filed a bond for $15,000 for the purposes mentioned in the order (Case No. 287, R. 6), and the Palmetto Fire Insurance Company appointed a temporary attorney to receive service of process.

This court has jurisdiction to restrain the State Commissioners of Insurance from proceeding against the plaintiffs-appellants under unconstitutional state statutes, and also has power to restrain the Commissioners if they are transcending the bounds of valid state statutes and unlawfully assuming to exercise the power of Government against the plaintiffs-appellants, contrary to their constitutional rights. The jurisdiction of the court extends to the determining of the questions involved in the case, including those of state law, irrespective of what disposition may be made of the Federal question or whether it be found necessary to decide it at all.

Philadelphia Co. *v.* Stimson, Secretary of War, 223 U. S. 605.

State of Colorado *v.* Toll, 268 U. S. 228.

Reagan *et al. v.* Farmers Loan & Trust Co., 154 U. S. 362.

Louisville & Nashville R. R. *v.* Garrett, 231 U. S. 298.

Ex parte Young, 209 U. S. 123.
Work *v.* State of Louisiana, 269 U. S. 250.
Sioux City Bridge Co. *v.* Dakota County, 260 U. S. 441.

Questions Involved.

While the methods of marketing and financing the sale of automobiles may be somewhat involved, nevertheless the questions presented by these cases may be simply stated as follows:

1. Is a Chrysler dealer an insurance agent within the meaning of the Wisconsin and Maine statutes, when he sells his own property—the automobile—because his vendor in a foreign state made a contract of insurance in respect to that property for the benefit of "whom it may concern", in which contract he, the dealer, did not participate, under which he does not act, and concerning which he has no voice or control? If so, do the statutes conflict with the Federal Constitution?

2. Have the States of Wisconsin and Maine by legislation attempted to extend their power beyond the state jurisdiction into Michigan, so as to inflict a perpetual contractual paralysis upon the Chrysler Sales Corporation from entering into insurance contracts "for account of whom it may concern" in respect to automobiles it sells in interstate commerce to residents of Wisconsin and Maine? If so, do those statutes violate the Federal Constitution?

3. When the purchasers of Chrysler automobiles in Wisconsin and Maine accept the benefits of an insurance contract made in Michigan between nonresidents, does that constitute the making of new contracts in Wisconsin and Maine subject to regulation by those states?

Statement.

The Chrysler Sales Corporation (hereinafter in this brief referred to as "Chrysler") and the Palmetto Fire Insurance Company made a contract of insurance at Detroit, Michigan, insuring "whom it may concern" against the hazards of fire and theft to Chrysler automobiles for one year from the date of their retail sale by automobile dealers throughout the United States. Both were corporations of foreign states and were not licensed to do business in Wisconsin and Maine. This litigation arose out of the operation of that contract. The Chrysler Sales Corporation is a subsidiary or affiliated company through which the manufacturer of Chrysler cars markets all of its product.

An explanation of the purposes and nature of the insurance finance plan inaugurated by the Chrysler Sales Corporation as well as a recital of the facts will assist this court in determining the issues.

More than eighty per cent (80%) of the automobiles of all makes sold at retail in the United States are sold under deferred payment or instalment plans, whereby a lien or title is retained on the car as security for part of the purchase price. The automobile dealers usually arrange with a finance company or a bank to purchase from or discount for them the notes, lien or title security instruments given by the purchasers of the automobiles. The discount or financing charges are added to the retail price of the car, so that when the instalment paper is sold by the dealer he receives sufficient, together with the cash down payment made by the purchaser, to equal the cash retail price of the

automobile. The banks and finance companies have insisted upon insurance on the automobiles and have controlled the same, adding the cost thereof to their finance or discount charges. This led to abuses in the way of fictitious and extremely high financing charges for insurance, banking accommodations, drawing of legal documents, etc.

Chrysler, being engaged in a highly competitive business, endeavored to correct these abuses, thereby increasing the sale of its product throughout the United States by securing a uniform finance charge throughout the United States which it could generally advertise, and thereby the purchasers of its product could easily determine the ultimate cost of Chrysler automobiles purchased by them on the instalment plan.

To this end Chrysler made an arrangement with the Commercial Credit Company of Baltimore, Maryland, for a low uniform finance rate throughout the United States, available to all dealers in Chrysler cars at their option. This rate was to be advertised so that prospective purchasers might be fully informed and not be deceived into paying higher rates. The Commercial Credit Company, however, required insurance against the hazards of fire and theft on all such cars to be financed, and in order to give the low rate required, this insurance had to be uniform and comprehensive enough to fully protect its interests, so as to avoid the necessity of examining and checking up miscellaneous policies of different insurance companies in the several states on each financed sale.

Chrysler found it could obtain this insurance automatically effective for the benefit of "whom it may concern" at an extremely favorable rate provided all of its product throughout the United States was covered. The retail

purchasers of Chrysler cars would thereby get the advantage and benefit of Chrysler's mass purchasing power. The insurance company was enabled to give a favorable rate by reason of the spread of business and the elimination of acquisition cost—i. e., the commission of state agents, underwriting agents and brokers—which ordinarily runs from 25% to 40% in different jurisdictions on the gross amount of premiums collected.

The advantages of such automatic insurance were immediately apparent. Neither the purchasers nor the dealers nor the finance companies would have to apply for or obtain insurance. All purchasers would be instantly protected from the time of a retail sale. Coverage would not be dependent upon proper instruments and forms being written. Finance companies and bankers would be relieved of the necessity of watching and examining specific policies. It was estimated that the saving to retail purchasers of Chrysler cars throughout the United States by reason of the low finance rate would amount to $5,000,000. per annum. The Chrysler sales plan would therefore be a great convenience and economic saving to automobile purchasers.

The insurance contract is in the usual form of an automobile insurance policy with a rider attached which in effect creates a running or open blanket policy. It was entered into on June 16, 1925 (Case No. 286, R. 12-32; Case No. 287, R. 16-36) at Detroit, Michigan, by and between Chrysler, a Delaware corporation which had its principal place of business at Detroit, and the Palmetto Fire Insurance Company, a South Carolina corporation which has a general agency at Detroit; and on August 4, 1925, at Detroit, Michigan, the same parties entered into a new contract (Case No. 273, R. 11-31; Case No. 274, R. 11-32; Case

No. 286, R. 34-53; Case No. 287, R. 38-57) modifying and clarifying to some extent the policy of June 16th, but not substantially changing the nature of the insurance.

The policy was issued to Chrysler "for account of whom it may concern, as hereinafter specified", giving insurance coverage against the hazards of fire and theft on all Chrysler automobiles sold at retail during the contract year. The insurance in each case was for one year from the date of the sale of a Chrysler car. When Chrysler learned from its dealers in the usual routine of its business of the retail sale of Chrysler cars, it advised the insurance company. Thereupon the insurance company prepared a certificate, had it countersigned at Detroit, Michigan, and mailed from Detroit, Michigan to the retail purchaser, banks, finance companies, dealers and all other parties having an interest or title in the car. The certificate certified that the blanket policy delivered to the Chrysler Sales Corporation at Detroit "for account of whom it may concern", covered the automobile purchased by the retail purchaser against the hazards of fire and theft, and it gave a summary of some of the conditions of the blanket policy.

The automobiles were automatically insured from the date of their retail purchase whether or not a certificate was issued, the policy of June 16th providing:

> "It is expressly agreed that all Chrysler cars shall be automatically covered as provided herein, notwithstanding the failure or omission to apply for a certificate, or the failure or omission to issue a certificate, or the failure or omission to report any Chrysler car as required herein",
>
> (Case No. 286, R. 21; Case No. 287, R. 24-25)

and the policy of August 4th provided:

> "It is specifically agreed that every Chrysler car sold at retail during the term of this policy shall be automatically covered hereunder notwithstanding any failure or omission to issue a certificate or any failure or omission to report the sale of such car as required herein."
>
> (Case No. 273, R. 19; Case No. 274, R. 20; Case No. 186, R. 42; Case No. 287, R. 46.)

(Through typographical error part of the quotation is omitted in Case 273, R. 19.)

The premiums for the insurance were paid or to be paid by Chrysler to the insurance company at Detroit, Michigan. The dealers or retail purchasers did not pay or remit nor were they required to pay to the insurance company or anyone acting for the insurance company any premium for the insurance. Chrysler quite naturally did include the cost of insurance in the wholesale price of its product, the same as it included in the sale price its cost of workmen's compensation insurance or other overhead expenses.

The retail purchaser was not required to accept the insurance, but in the event that he provided his own insurance, then the coverage under the blanket policy was to be excess insurance. Whether or not the purchaser accepted the insurance, Chrysler nevertheless had to pay the premium. No rebate, refund or allowance of any nature was made by Chrysler to the dealers or the retail purchasers on the purchase price of an automobile, when the retail purchaser procured his own insurance and did not accept the benefit of the coverage under the blanket policy. The dealers paid a cash purchase price f. o. b. Detroit, Michi-

gan as they purchased cars at wholesale. They paid the same price even though they might not wish the automobiles purchased by them to be covered under the blanket policy. The cars became the property of the dealers to do with as they wished.

The distributors and dealers are not agents of Chrysler. They are customers. They have no authority to act for or obligate Chrysler. They are merchants in their own right. Whatever money the dealer received from the sale of an automobile was his own, for which he did not have to account, and no part of which had to be remitted to Chrysler or the insurance company. The money received by Chrysler from the sale of automobiles at wholesale in interstate commerce was its own money, to do with as it pleased.

Chrysler did not collect any insurance premiums from dealers and the dealers did not collect any premiums from retail purchasers. Both collected the purchase price of the cars sold by them. In the automobile business there are distributors and dealers. A distributor sells at both wholesale and retail, while a dealer sells at retail. A larger discount is allowed to distributors than to dealers. Cars are sold at wholesale at a list price less a discount plus war tax, freight and delivery charges, and are sold at retail at a flat net price equal to the list price, war tax, freight and delivery charges. The discount allowed at wholesale represents the dealer's profit at retail.

The Insurance Commissioners of the States of Wisconsin and Maine regarded the dealers selling automobiles insured under said blanket policy as insurance agents, or assuming to act as insurance agents within the meaning of the respective state statutes. The Commissioners were

about to notify the public that the insurance so provided was void and illegal, and that the dealers were violating the law; and they threatened to bring criminal proceedings and civil actions for penalties against dealers. As this would cause immediate and irreparable damage to the plaintiffs appellants, they accordingly filed their bills of complaint before the United States District Courts for the respective districts of Wisconsin, Western District, and Maine, Southern Division, and obtained temporary restraining orders against the Commissioners, pending the determination of a motion for an interlocutory injunction. After hearings held in accordance with Section 266 of the Judicial Code of the United States, the statutory courts therein provided for in both the Western District of Wisconsin and the Southern Division of Maine denied to the plaintiffs-appellants interlocutory injunctions prayed for, and upheld the contention of the Insurance Commissioners that the dealers by selling Chrysler cars were acting or assuming to act as insurance agents without license from the states, because the purchase from the dealer at retail of such cars insured under the blanket policy constituted the making of insurance contracts and the doing of business within the states of Wisconsin and Maine by the Palmetto Fire Insurance Company, a foreign unlicensed company; that the Insurance Commissioners were warranted by valid state laws in doing or threatening to do the things complained of by the plaintiffs-appellants. From these judgments of the statutory courts the plaintiffs-appellants appealed direct to this court.

Assigned Errors To Be Urged.

Case No. 286, R. 83; Case No. 287, R. 84; Case No. 273, R. 48; Case No. 274, R. 49.

1. The courts erred in holding that the dealers in Chrysler cars violated the penal statutes of Wisconsin and Maine when they sold at retail Chrysler automobiles covered by insurance under a contract made at Detroit, Michigan, by the Chrysler Sales Corporation and the Palmetto Fire Insurance Company, both unlicensed in Wisconsin and Maine.

2. The courts erred in holding that the dealers in Chrysler cars are agents of the Palmetto Fire Insurance Company in the States of Wisconsin and Maine, in connection with insurance in respect to the Chrysler cars sold at retail by such dealers in Wisconsin and Maine.

3. The courts erred in holding that by virtue of the insurance contract made at Detroit, Michigan, and acts incidental thereto, the Palmetto Fire Insurance Company was transacting insurance business in Wisconsin and Maine respectively; and that such business was unlawful.

4. The courts erred in holding that the Palmetto Fire Insurance Company was subject to the tax statutes of Wisconsin and Maine in respect to premiums of insurance paid at Detroit, Michigan, by the Chrysler Sales Corporation for insurance coverage on Chrysler cars sold at retail by dealers in Wisconsin and Maine, and that such tax statutes were not in violation of the Constitution of the United States.

5. The courts erred in holding that the acts and threatened acts of the Insurance Commissioners complained of, were supported and sanctioned by law.

6. The courts erred in refusing to hold the various insurance statutes of Wisconsin and Maine had no application to dealers selling Chrysler automobiles at retail as set forth in the complaints.

7. The courts erred in refusing to hold that the statutes of Wisconsin and Maine, insofar as they may be construed as prohibiting or penalizing the acts of the dealers in selling Chrysler cars in Wisconsin and Maine, were in violation of the Constitution of the United States in that——

(a) They take property of plaintiffs-appellants without due process of law.

(b) Deny equal protection of the law.

(c) Penalize and lay a burden upon a contract made without the States.

(d) Destroy liberty of contract without due process of law.

(e) Violate the Fourteenth Amendment to the Constitution of the United States; violate Article I, Section 10, and Article IV, Section 1, of the Constitution of the United States.

8. The courts erred in refusing to hold that insofar as the statutes of Wisconsin and Maine prohibit the sale of Chrysler cars covered by an insurance policy made and delivered and to be performed in Michigan, those state statutes impose a burden and prohibition on interstate commerce contrary to the Constitution of the United States.

9. The court for the Western District of Wisconsin erred in refusing to hold invalid and unconstitutional Section 203.07 of the Wisconsin Statutes 1923 which provides that all fire insurance contracts with respect to property in Wisconsin were to be construed as Wisconsin contracts.

Summary of Argument.

1. Chrysler dealers in Wisconsin and Maine are independent automobile merchants and not insurance agents. They sell cars at retail which they had previously bought and paid for at wholesale. Their vendor, Chrysler Sales Corporation, at Detroit, Michigan, made a contract of insurance in that State with the Palmetto Fire Insurance Company by virtue of which Chrysler cars were automatically insured for the benefit of "whom it may concern" from the date of their retail sale. The dealers had no voice in the making and no control over the operation of the Michigan policy. The decision of the Statutory Court for the Southern District of New York (Palmetto Fire Insurance Company *v.* Beha on rehearing not yet reported) correctly states the law in respect to the Michigan blanket policy and dealers acts in the sale of the cars, and the Federal Court for the Western District of Wisconsin (cases 286 and 287), 9 Fed. (2) 666, and Southern Division of Maine (cases 273 and 274), 9 Fed. (2) 674, made unjustified inferences from the facts and erroneous conclusions of law, as is shown by an analysis of the opinions of said Courts. See pages 19-26.

2. The Wisconsin and Maine insurance statutes by their terms are not applicable to the acts of the dealers in selling

Chrysler cars and do not sanction or support the threatened acts of the Commissioners of Insurance of Wisconsin and Maine. The dealers do not effect insurance, do not collect premiums nor forward applications for insurance; they receive no remuneration for effecting insurance and make no fraudulent representations in respect to insurance; the dealers receive only their usual profit for the sale of their own property. The fact that Chrysler in a foreign state had included the cost of insurance as an overhead expense in the wholesale price of the cars to the dealer does not constitute the paying of a premium by the dealer in the purchase at wholesale of the cars, nor the collecting of a premium by the dealer from the retail purchaser when the dealer sells the car at retail for sufficient to reimburse him for his wholesale price plus his usual profit. The dealers are independent merchants and the proceeds of the sale of an automobile is their own property to do with as they please. What they do they do on their own account and in their own business. See pages 26, 34.

3. The dealers are not agents of the insurance company; they have no communication with it and have no authority to act for it. In other jurisdictions they have not been regarded as insurance agents, nor do they come within the definition of insurance agents as decided in the cases of the several jurisdictions. See pages 38-42.

4. Insurance on Chrysler cars is by virtue of a Michigan contract and not Wisconsin or Maine contracts. The Michigan policy is a completed contract notwithstanding the postponement of its operative effect until the retail sale of a Chrysler car. The operative effects of "for whom it

may concern" policies usually are postponed both as to the identification of the property covered and of the person or persons insured. See *Hagan et al.* v. *Scottish Union Ins. Co.*, 186 U. S. 423; *Hooper* v. *Robinson*, 98 U. S. 528, and other cases cited in this brief. The acceptance of the benefits of the Michigan policy by the retail purchasers and other beneficiaries does not constitute the making of several new contracts. Their rights are those of a third party to a contract made for their benefit. See pages 42-55.

5. The retail sale of Chrysler cars covered by the policy issued by the insurance company in Michigan does not subject that insurance company to liability for taxes in Wisconsin and Maine. See *St. Louis Cotton Compress Co.* v. *Arkansas*, 260 U. S. 346 and other cases; nor do the dealers become agents of the Insurance Company for the purpose of service of process. See *Minnesota Commercial Men's Association* v. *Benn*, 261 U. S. 140 and other cases. See page 55.

6. If the Wisconsin and Maine statutes should be so construed as to penalize the acts done by the Chrysler dealers in these cases, they would be unconstitutional to that extent. These cases come within the principles laid down by this Court in *Allgeyer* v. *Louisiana*, 165 U. S. 578; *Minnesota Commercial Men's Association* v. *Benn*, 261 U. S. 140; *Aetna Life Ins. Co.* v. *Dunken*, 266 U. S. 389, and other cases cited in this brief, and are to be distinguished from *Hooper* v. *California*, 155 U. S. 648; *Nutting* v. *Massachusetts*, 183 U. S. 553, in that the dealers do no overt act of insurance within the states of Wisconsin and Maine other than to conduct their legitimate business of selling Chrysler

cars. The statutes of Wisconsin and Maine can be given no extra-territorial effect and the Commissioners of those states have no jurisdiction over the blanket policy of insurance issued and to be performed in Michigan. See pages 56-61.

7. The states and the officers of the states cannot use their powers to accomplish a forbidden result and the attempt of the Insurance Commissioners to prevent the sale of a Chrysler car in their respective states because Chrysler in a foreign state included as an overhead expense the cost of insurance in the wholesale price of the car amounts to a placing of a burden on interstate commerce. While insurance is not in itself a commodity the subject of interstate commerce, nevertheless an attempt to regulate it when effected in a foreign state because its cost entered into the price of the commodity is an interference with the sale of the commodity itself in interstate commerce. See *Thames & Mersey Ins. Co.* v. *U. S.*, 237 U. S. 19; *Shafer* v. *Farmers Grain Co.*, 268 U. S. 189; *Alpha Portland Cement Co.* v. *Massachusetts*, 268 U. S. 203. The Commissioners of Insurance have no constitutional right to arbitrarily interfere with the legitimate business of a Chrysler dealer in the sale of his car. See pages 61-63.

ARGUMENT.

I.

The Wisconsin and Maine statutes are inapplicable to the acts of dealers and distributors of Chrysler cars involved in these cases and do not sanction or support the threatened acts of the defendants-appellees—Commissioners of Insurance of Wisconsin and of Maine.

The same contract involved in these cases and the same set of facts were considered by the statutory court under Section 266 of the Judicial Code for the Southern District of New York in the action of Palmetto Fire Insurance Company, which is the insurer in these cases, against James A. Beha, Superintendent of Insurance of New York (not yet reported but cited by this court in Fidelity & Deposit Co. *v.* Tafoya, *supra*). There is a direct conflict between the decision of the court for the Southern District of New York and the Western District of Wisconsin and Southern Division of Maine. The statutes of New York are quite similar to the Maine and Wisconsin statutes. The courts for the Western District of Wisconsin and the Southern Division of Maine disapproved of the conclusions of the court for the Southern District of New York. (9 Fed. (2d) 666, 673; 674, 678.)

On the strength of the decisions of the United States courts for Wisconsin and Maine, a rehearing was granted by the court for the Southern District of New York, and that court in adhering to its original decision, said (Palmetto Fire Ins. Co. *v.* Beha (rehearing decided July 14, 1926, not yet reported, but printed in full in the appendix, page 77, of this brief):

> "The question is whether the dealer by explaining the transaction to the purchaser, forwarding his name with the amount paid for the car, in which the insurance premium had been taken into account in the charge, was effecting or procuring insurance in this state (New York) within the meaning of the statute. * * * It is going further, however, to say that the retailer is the agent of a company which neither directs or pays him, nor has anything to do with him. The question is one of the construction of the New York Statute, than of constitutional law, and we hold that the fact of acquisition by the purchaser of Chrysler cars under a contract of sale, which *ipso facto* gives them insurance protection under an agreement made in Michigan between the Chrysler Company and the plaintiff, does not involve the effecting or procuring of insurance within the State of New York."

(The statement that the dealer forwards the amount paid for the car is erroneous. He keeps it as proceeds of his own property.)

A study of the decisions of these courts in respect to the same contract will show that the conflict is due entirely to an interpretation and an understanding of the facts and the inferences placed by the courts on those facts.

The complaints in all of these cases, and the contract of insurance involved in these cases, show unmistakably that the blanket policy of insurance was made at Detroit, Michigan, where Chrysler had its principal office and the insurance company maintained an agency; that the premiums were paid at Detroit, Michigan, by Chrysler on all cars sold at retail whether or not the insurance was accepted; that the certificates under that policy, after being counter-

signed at Detroit, Michigan, were mailed from and issued at Detroit, Michigan; that claims were to be presented and losses paid at Detroit, Michigan, loss checks being mailed from that State; that the cars were sold by Chrysler in interstate commerce at Detroit, Michigan, for a definite price to the distributors and dealers; that no premium as such was paid by the distributors or dealers to Chrysler; that the distributors and dealers were the customers and not agents of Chrysler, purchasing and paying in cash for cars which they sold at retail as their own property; that the money received from the retail purchaser belonged to the distributors and dealers and no part of it was ever accounted for or remitted to Chrysler; that the distributors and dealers did not remit or transmit any premium of insurance to either Chrysler or the insurance company; that Chrysler made no refund, rebate or allowance of any nature to either a dealer or retail purchaser on the purchase price of a Chrysler car because the dealer or purchaser disapproved of or did not accept or want the insurance in respect to that car provided for in the blanket policy; that the insurance company did not direct or pay the dealers nor in any way authorize them to represent the insurance company; and that the dealers did not hold themselves out as insurance agents.

Notwithstanding these facts, however, the court of the Western District of Wisconsin concludes (9 Fed. (2d) 666 at p. 671):

> "The dealer in Wisconsin clearly does these things in Wisconsin—
>
> 1. He sells the car, including insurance.

2. He collects the price, including the premium. (That he does not remit it is of small moment, having already advanced it, receiving nothing for it.)

3. He fixes the term of insurance.

4. He selects the beneficiaries—purchasers and financier.

5. He notifies the complainant of these details by mail.

All these things except the last are essential to the completion of the insurance contract, and bring it into actual existence and occur in Wisconsin between residents of that state, the dealer acting with authority under the Michigan contract."

and the court for the Southern Division of Maine said (9 Fed. (2d) 674, at p. 677):

"When he sells a car he is clearly making himself an instrument for effecting the insurance of it, although such insurance is incidental and deemed by him to be of little consequence. He effects this insurance in behalf of the Palmetto Company; and he has authority to so effect it. When he reports the sale to the Sales Company at Detroit, giving the name of the purchaser, the date of the sale, the motor number, the style of the car, and all elements required in order to issue an ordinary insurance policy,—and upon which certificate is actually issued—he seems to us to be giving the necessary information for effecting the insurance. In giving such information he is clearly acting for the Insurance Company. Within the meaning of the statute we think he 'assumes to be an agent' and 'procures risks and receives money for premiums,' even though such premiums are submerged in the term 'delivery charges' and other expressions."

Considering the elements which those courts thought conclusive in the order in which the courts name them in their opinions, it is apparent that the dealers are not insurance agents.

1. The dealer sells the car only. He does not sell insurance. When the dealer sold a car the retail purchaser and others having an interest in that car became beneficiaries of a contract already existing at Detroit, Michigan, because of the provisions in that contract. The dealer might have disapproved of the insurance. He might not have known of the insurance. He might even have told the retail purchaser that the car was not insured under the blanket policy. Nevertheless under the provisions of the blanket policy the purchaser was insured. The dealer might have sold the car for less than he had paid for it so that by no chance could he be considered as selling insurance or collecting a premium, notwithstanding which, the insurance protection under the blanket policy would extend to the purchaser and other beneficiaries in respect to that car. Illustrations might be multiplied evidencing clearly that the dealer sold only the car—his own property—and that he did not sell insurance.

2. The dealer collected the price of the automobile and he did not collect an insurance premium. Let us assume that he sold the car after the expiration of the term of the blanket policy. He would nevertheless have sold it at a price to reimburse him for what he paid for it and yield him a profit. The purchaser in that event however would not have been insured, although the purchaser in that case might have paid the same price as that paid by an insured purchaser the day previous to the expiration of the blanket

policy. Nor is it true that the dealer had already advanced the premium and received nothing for it. What the dealer advanced was the cash wholesale price of the car to his vendor,—Chrysler, or a distributor—and for it the dealer received a Chrysler car. If the dealer had advanced an insurance premium and had never sold the car or had sold the car after the expiration date of the blanket policy, he might have been entitled to a return of his premium. He got no refund or return premium because Chrysler had received no premium from him—it had received the sale price of its car. Furthermore, Chrysler would not pay a premium to the insurance company in respect to cars sold after the expiration of the policy, but it would keep what it had received from the dealer for its product—evidencing clearly that it never received a premium.

3. The term of the insurance was fixed by Chrysler and the insurance company when they made the blanket insurance contract at Detroit, Michigan. The dealers and distributors had no voice in that contract, they could not change or modify its terms. They could not enlarge or lessen the length of the term of insurance as provided for therein. There are no facts or reasonable inferences from facts to justify the statement of the court that the dealers "fixed the term of insurance".

4. Nor does the dealer select the beneficiaries of the insurance. By the retail sale of a car—the purchaser becomes a beneficiary; by the sale or discount of the instalment obligations, the financier becomes a beneficiary. This is a "for whom it may concern" policy, and among other things it provides:

> "All banks, trust companies, persons, firms or corporations with or to whom Commercial Credit and/or Affiliated Company and/or Other Finance Companies hypothecate, trustee, pledge, transfer, assign and/or negotiate notes and/or security instruments, shall be protected by this insurance."

They too are beneficiaries of the contract and they are selected by the financiers and not by the dealer, as the dealer has no control over what the finance companies may do with the instalment obligations after they have purchased them.

5. The dealer notifies Chrysler of his retail sales, as he has always done as a routine matter in the automobile business. The automobile manufacturers usually make use of such information for advertising purposes, but Chrysler also used it in its insurance arrangement. The dealer made no application for insurance when he reported his sales, and in fact he had no way of knowing what Chrysler did or might do with this information.

It is interesting to note that the Wisconsin court considers the notification of the sales by the dealer to Chrysler as unessential, while the Maine court uses this circumstance as conclusive evidence that the dealer is an agent of the insurance company and is acting on its behalf and by its authority. A reading of the blanket policy is sufficient in itself to refute the conclusion of the Maine Court. The policy provides that the insurance is automatically in favor of all beneficiaries regardless of whether the sale is ever reported or a certificate issued. (See *supra*, pp. 9, 10.)

A further study of the state statutes, with these facts well in mind, should satisfy this court that the conclusions of the lower courts were erroneous in holding those statutes applicable.

Wisconsin Statutes.

The various Wisconsin statutes which relate to these cases are printed in full in the appendix to this brief.

Section 203.07 of the Wisconsin Statutes of 1925 provides, among other things:

> "All future contracts of insurance against the risk of loss or damage by fire or lightning upon property in this state shall be held to be made and effected within this state."

That statute is not cited in the opinion of the Wisconsin court but must be relied upon in order to constitute the insurance a Wisconsin contract. The purpose of the statute to prohibit the making of a contract beyond the state with reference to property within the state set forth by the Wisconsin courts (*Presbyterian Ministers' Fund* v. *Thomas*, 126 Wis. 281; *Rose* v. *Kimberly & Clark Co.*, 89 Wis. 545, 550), is convincing proof that it runs counter to the Federal Constitution. *Aetna Life Ins. Co.* v. *Dunken*, 266 U. S. 389.

The statutes mentioned in the opinion of the court for the Western District of Wisconsin are *Section 201.41 (1)*, which provides that no insurance company shall transact insurance business in the state without a license, and provides how that license may be obtained and kept; *Section 201.44*, which provides that no policy shall be issued or de-

livered except through a duly qualified agent, and that any person soliciting or placing insurance without complying with the section shall in addition to other penalties be liable personally upon the policy; *Section 209.04* provides that no person, officer, broker, agent or sub-agent of an insurance corporation required to pay a license fee shall act or aid in any manner in transacting the business of such corporation in placing risks or in collecting any premiums or assessments or effecting insurance, without procuring from the insurance corporation a certificate, and shall not, after the license of any such company has been revoked or expired, do or perform any act on behalf of the insurance corporation. Penalties are provided for violation of the statutes. *Section 209.05* provides that every person or member of a firm or corporation that solicits insurance on behalf of an insurance corporation or a person desiring insurance, or transmits an application other than for himself to or from any such insurance company, or who makes any contract for insurance or collects any premiums or in any manner aids or assists in doing either or in transacting any business of like nature or advertising of it shall be considered an agent of the company "*unless it can be shown that he received no compensation for such services*"; *Section 348.488* provides that if any unauthorized insurance company or other unauthorized insurer takes or receives any application for insurance "*in this state*" or receives or collects any premium for such insurance, it shall be fined, and any officer, agent, solicitor or broker "*or other employee*" of any such unauthorized insurance company who takes or receives an application for insurance "*in this state*", or receives or collects the premium or any part thereof, shall be guilty or a felony, and provides the punishment.

The most pertinent of those statutes are *Sections 209.04, 209.05* and *Section 348.488*. These sections are penal in character and should be strictly construed.

Section 209.04 and *Section 209.05* are companion statutes, and it appears from State *v.* Farmer, 49 Wisconsin 459, that these two sections were originally enacted as Sections 1 and 3 of the same chapter, being Chapter 13 of the Laws of 1871. *Section 209.04* says—

> "(1). No person, officer, or broker, agent or subagent of any insurance corporation of any kind required to pay any tax or license fee to the state shall act or aid in any manner in transacting the business of or with such corporation in placing risks or in collecting any premiums or assessments or effecting insurance therein, without first procuring from the insurance corporation a certificate of authority."

There must be some definite relationship between the corporation and individual acting or presuming to act on behalf of or for the corporation, to come within the statute. The definition of an agent in *Section 209.05* is qualified by the phrase "unless it can be shown that he receives no compensation for such service". As has been repeatedly mentioned, the dealer sells his own property—he is the absolute owner of the automobile—and the purchase price he receives from the retail purchaser is the proceeds of his own property. He does not forward, remit or transmit any part of the proceeds, but keeps them to reimburse himself for cost of the car, plus his profit. Because Chrysler, the dealer's vendor, paid premiums for the insurance, the lower courts considered that the insurance premium was wrapped up in the wholesale purchase price of a car, paid by the dealer and by him passed on to the purchaser in the retail price of the car.

The dealer received his usual customary profit on the car, which he had always gotten even before Chrysler, his vendor, made the blanket insurance contract. Admittedly the insurance company did not pay the dealer any remuneration. It is clearly *non sequitur* to say that the dealer received compensation as an insurance agent because he sold the automobile at a price sufficient to reimburse him for the cost of the automobile to himself, plus yielding him his usual profit on the sale.

The broad prohibitory statement in the statute against "acting or aiding in any manner in transacting the business of or with such corporation" is limited further by the words "in placing risks or in collecting any premiums or assessments or effecting insurance therein", meaning within the state.

The term "placing risks" involves the idea of a preliminary investigation or at least some overt act. The blanket policy automatically places the risk regardless of what the dealer might or might not do. The dealer is powerless to prevent the placing of the risk. The collecting of premiums or assessments, being coupled with the expression "transacting a business of or with such insurance corporations" further precludes the idea of the dealer being an agent. The collection of the premium must concur with the relationship with the insurance company to offend the statute. The dealer has no communications or relations whatsoever with the insurance company. He did not advertise or hold himself out as representing an insurance company. He paid the purchase price for his cars to his vendor—Chrysler—and not to the insurance company. By no stretch of the imagination could he therefore be considered as collecting a premium of, for or with the insurance company.

Furthermore, under the language of the statutes the dealer must act or aid in the transacting of an insurance business for an insurance corporation required to pay a tax or a license fee to the state. The Palmetto Insurance Company was not qualified to do business in Wisconsin and was not transacting business therein, and therefore was not subject to any tax. See page 55 of this brief.

The decisions of the Wisconsin Courts interpreting the insurance statutes as defining an insurance agent, while not numerous, nevertheless confirm the construction given in this brief. In the very recent case of Bristol & Company *v.* Railroad Commission of Wisconsin (Circuit Court for Dane County, decided July 19, 1926, not yet reported, but printed in full in the appendix, page 79, of this brief) the following findings of fact and conclusions of law were made:

That Bristol and Company was the trade name of Frederick C. Bristol, a resident of Illinois, who underwrote bonds of the Kankakee Hostelry Company, of Illinois, the principal and interest of which bonds were guaranteed in part by United Lloyds of America and in part by Federal Surety Company, neither of which surety companies were qualified to do business in Wisconsin. Bristol paid the premiums in Illinois. Bristol in Illinois sold the bonds to Guaranteed Bond Company of Milwaukee, Wisconsin, and the Guaranteed Bond Company of Wisconsin sold the bonds to residents of Wisconsin so guaranteed by the two non-admitted surety companies. Later Bristol made application for a permit to sell the bonds in Wisconsin, which application was denied. In the mandamus proceedings before the Circuit Court for Dane County, Wisconsin, Judge Hoppmann said:

> "The sale and delivery by the said Guaranteed Bond Company of the said bonds in the State of Wisconsin, including said guarantee, does not constitute the doing of a guarantee or surety business in Wisconsin on the part of the said United Lloyds of America or the said Federal Surety Company."

The court set aside the order of the Commission in refusing to grant permission to sell the bonds, and directed the commission to issue a permit. This case seems to be practically identical with the cases now considered by this court.

These sections of the statutes have never been construed by the courts of Wisconsin as applying to any other than actual insurance agents in the ordinary sense of that term, including of course brokers where they represent the insurance company as well as the assured. See:

> State *v.* Farmer, 49 Wisconsin 459;
> John R. Davis Lumber Co. *v.* Hartford Fire Insurance Co., 95 Wisconsin 226;
> Schomer *v.* Hekla Fire Ins., 50 Wis. 575;
> Ocean A. & G. Corp. *v.* Combined L. P. Co., 162 Wis. 255.

Opinions on these statutes, however, have been given by the attorneys general of Wisconsin. Attorney General Gilbert (O. A. G. Wisconsin 1908, page 500) says:

> "To make an individual or corporation liable for collecting and transmitting premiums under the provisions of Section 1977, Statutes of 1898 (Sec. 209.05, Stats. 1923), two things must necessarily be established. First, the collecting of the premium as an agent of the company; second, a charge or com-

> pensation must be received for the service so rendered.
>
> "I am of the opinion that where no compensation be charged or received in excess of the usual rate of exchange for transmitting funds that the charge so made is for transmitting the money and cannot be held to be a charge for collecting, and the banks so transacting the business and not otherwise employed or compensated by the insurance company, do not come within the description of an agent of an insurance company under the provisions of said Section 1977."

and Justice Owen of the Wisconsin Supreme Court, while Attorney General of Wisconsin, rendered an option (O. A. G. Wis. 1916, Vol. V, Page 442) that an examining physician could not be held to be a person acting or aiding in the placing of insurance for an unauthorized company under *Section 209.04* (then *Section 1976*) or under *Section 209.05* (then *Section 1977*). He held that the statutes could not be construed as to include parties not generally regarded as insurance agents.

Section 348.488 discussed by the lower court provides among other things:

> "Any officer, agent, solicitor or broker or other employe of an unauthorized insurance company"

who violates the provisions of that statute shall be guilty of a felony. As this is a severe penal statute, making it a felony to do the prohibited acts it should, following the general rule as well as the rule of Wisconsin, be strictly construed. See:

> State *v.* Columbian Nat. Life Insurance Co., 141 Wis. 557.

The statute in the first place applies only to those having a direct relationship with the unauthorized insurance companies, amounting to an employment. The words in the statute "other employe" necessarily refer back and apply to the words "agents, solicitors and brokers". See

U. S. *v.* Standard Brewery, Inc., 251 U. S. 210.

The statutory definition of agent in Section 209.05 cannot be extended to give a different construction or meaning to the words of Section 348.488; and the word agent in that statute, as we previously have seen, has been limited to one who receives a compensation for his services.

In the second place, the prohibited acts are the taking or receiving of an application for insurance in the state, or the receiving or collecting of a premium of insurance, neither of which, as we have seen, is done by the dealers in Wisconsin. What they do they do on their own account and in their own business.

Section 348.488 was an amendment of Chapter 375 of the Laws of 1925, which was formerly 4575S of the Statutes of 1923. The 1923 statute was a prohibition against the taking of an application "on property in the state". It was a companion section to what is now 203.07, which we have seen, is clearly unconstitutional, *supra*, p. 26. It was evidently the intention of the statute in its original form to place a burden on and restrict the making of policies of insurance outside the state on property within the state. The amendment of 1925 modified this prohibition to the receiving of an application for insurance "in this state", and the penal provisions relative to agents and other employes was likewise limited to "insurance in this state". The statute by its own language, therefore, cannot be applied to a situ-

ation where the risk of insurance in the state is covered by a contract made outside the state.

Section 201.44, prohibiting the issuing or delivering of a policy in the state except through an authorized agent, and making any company or person soliciting or placing insurance in violation of the statute personally liable upon such a policy or contract of insurance, is not applicable because the dealers do not deliver any policies or certificates of insurance. Moreover, no policies or certificates are delivered to anyone *in the state*. The certificates advising of the automatic insurance under the blanket policy are mailed from Detroit, Michigan, by the insurance company to the purchasers and other beneficiaries. The view of the court that the policy is delivered in Wisconsin "through the postal service as the agent of the insurer" is manifestly unsound. In any event the dealers would not be amenable for the delivery by the postal service.

Maine Statutes.

Section 122 which applies to brokers who receive remuneration is not discussed by the court as apparently it is accepted as not applicable.

The only section of the Maine statutes cited in the opinion of the lower court as being violated by the Chrysler dealers is Section 121 of Chapter 53 R. S., as amended by Chapter 25 P. L. 1917. The penalties of that statute apply "if any person solicits, receives or forwards any risk or application for insurance to any company without first receiving such license, or fraudulently assumes to be an agent and thus procures risks and receives money for premiums".

The Maine Federal Court, while following mostly the opinion of the Wisconsin court, nevertheless bases it decision for holding the dealer an agent upon the circumstances which the Wisconsin court considered unessential, i. e., the report sent by the dealer to his vendor, Chrysler at Detroit. Of this the court says:

> "When he (meaning the dealer) reports the sale to the sales company at Detroit, giving the name of the purchaser, date of the sale, motor number, style of car, and all the elements required in order to issue the original insurance policy and upon which the certificate is actually issued, he seems to us to be giving the necessary information for effecting the insurance. He is clearly acting for the insurance company. Within the meaning of the statute we think he assumes to be an agent and procures risks and receives money for premiums even though such premiums are submerged in the terms 'delivery charges' and other expressions."

The reports referred to are merely those given in the routine of the business and which have always been given by dealers to Chrysler, as is customary in the automobile business. They are not applications for insurance and make no reference to insurance. Moreover, the insurance is effective under the blanket policy whether or not the reports are made. It is true that the information is used by Chrysler at Detroit to have a certificate issued from Detroit by the insurance company to the purchaser and other parties interested, but the information is also used for advertising and other purposes.

In any event, the dealer gives the information to his vendor, Chrysler. The dealer has no communication what-

soever with the insurance company. The court is therefore in error in its conclusion in saying:

> "In giving such information he is clearly acting for the insurance company".

Furthermore the essential qualifying adverb in the statute—"fraudulently"—is omitted in the conclusion of the court that the dealer "assumes to be an agent" in violation of the statute. It is a penal statute and must be strictly construed. It is necessary, therefore, to prove that the dealer "fraudulently" assumes to be an agent. There is nothing in the record to show, and in fact the dealer never has held himself out to the purchasers as being an agent of the insurance company.

When the court says that the dealer effects the insurance in behalf of the insurance company and has authority to do so, it merely assumes the question. The preceding words by the court would seem to contradict the assumption and assuredly establish innocence of any fraud on the part of the dealer. (9 Fed. (2) 674, 677):

> "It is true that the dealer, who is himself the owner of the cars, does not hold himself out affirmatively and formally to be an insurance agent. He is not thinking much about insurance. He is bent on selling his cars. When he sells a car he is clearly making himself an instrument for effecting the insurance of it, although such insurance is incidental and deemed by him to be of little consequence."

It follows, therefore, that he could not be fraudulently assuming to be an agent.

The definition of agent appears in Section 31 of Chapter 53:

> "An agent authorized by an insurance company whose name is borne on the policy is its agent in all matters of insurance; any notice required to be given to said company or any of its officers by the insured may be given to such agent."

The obvious purpose of Section 121 is to provide for the license of those who are in fact and in name agents of insurance companies qualified to do business in Maine. The only requirement for a license is proof of the fact of agency. The penal provisions of the statute give control over foreign insurance companies, for they cannot get an agent a license unless they themselves have obtained a license.

The section of the Insurance Act corresponding to the present Section 121, prior to the passage of Chapter 112, P. L. 1891, was worded slightly differently, except as to the prohibitory provisions against soliciting, receiving and forwarding risks and applications, and fraudulently assuming to be an agent, which are identical in language with the present statute.

In State *v.* Hosmer, 81 Maine 506, construing the former statute, Chapter 49, Section 73 P. L. 1883 (as amended by 109 P. L. 1887) it was held essential to an indictment that the vendor be alleged to be an agent. The court said at p. 509:

> "* * * Under the terms of the statute one can be licensed only to act as an agent for some particular insurance company, after furnishing the required evidence of his appointment as such agent. The offense consists in acting as such agent without first complying with the statute and receiving a license to act as such agent. In this count, there is no allega-

> tion that the defendant in soliciting the applications for insurance, as set forth, acted or claimed to act as agent for the insurance company named."

It is evident that the Maine court in following the decisions of the Wisconsin court is not justified in the inferences it makes from the facts. The Chrysler dealers in Maine are not employed or engaged by the insurance company, nor do they act as such or pretend to act as such, either fraudulently or otherwise. What they do, they do on their own account and in their own business.

Dealers Are Not Regarded as Agents.

We have seen that the Statutory Court for the Southern District of New York (Palmetto Fire Insurance Co. *v.* Beha (not yet reported), held the dealer was not an insurance agent (*supra,* pp. 19, 20); and in an action by the Palmetto Fire Insurance Company to enjoin the Commissioner of Insurance of the State of Ohio from cancelling its license to do business because of the operation of this contract with the Chrysler Sales Corporation, the Statutory Court for the Southern District of Ohio (Palmetto Fire Insurance Co. *v.* Conn, 9 Fed. (2d) 202, 204) although refusing to grant an injunction, said—

> "Chrysler retail car dealers are not insurance agents, nor are they qualified or have they attempted to qualify as such under the insurance laws of the state."

In the State of Minnesota an arrest was actually made by the Commissioner of Insurance of a Chrysler automobile dealer and the case was tried in the Municipal Court

of the City of St. Paul in an action of State of Minnesota *v.* Maitland E. McKee (not reported). After all the evidence had been introduced, establishing facts substantially the same as those set forth in the bills of complaint in this case, the court dismissed the action because it was satisfied there was a total failure to prove solicitation of insurance.

In some other states the matter was determined by the opinion of the attorney general of the state. In the State of Alabama the attorney general, although holding that the license of the Palmetto Fire Insurance Company in that state could be revoked (which part of his opinion we believe unsound) nevertheless advised that the Chrysler automobile dealers should not be regarded as agents and said (Ala. O. A. G., Aug., 1925)--

> "The only remaining question is as to whether or not Chrysler dealers are insurance agents and must procure licenses as such. They have absolutely nothing to do with the contract. They solicit no insurance, have no connection or correspondence whatever with the Palmetto Company; did not put the insurance on the car and cannot take it off. They did not receive or transmit the certificate of insurance, nor do they collect or remit any premiums, nor did they do any act or thing in the making or consummating of the contract of insurance. In my opinion there is no reasonable interpretation of law whereby they may be deemed to be insurance agents under the above stated facts, and hence they may not be required to procure licenses as such."

When the insurance plan was enacted by the Chrysler Sales Corporation at Detroit, Michigan, a ruling was required from the Insurance Commissioner of that state as to whether or not the dealers in Michigan might be regarded

as insurance agents. In a letter to the Chrysler Sales Corporation, July 1, 1925, Commissioner L. T. Hand of Michigan said—

> "There could be no violation of the above quoted section of the law by the dealer, as he is not in my opinion either directly or indirectly aiding or assisting in transacting any business for or in behalf of any insurance company."

In all cases in all the states interpreting statutes similar to those involved in these cases, and even under broader statutes, which a thorough search reveals, convictions of alleged agents have been sustained only where a real relationship of principal and agent has existed; and where it has not been shown that the agent acted for or in behalf of the insurance company or the insured, the cases have been dismissed.

In *French* v. *People* (*Col*), 6 Colo. App. 311, 40 Pac. 463, it was held that a person who was not in fact an agent for the insurance company could not be constitutionally brought within such a statute, although he acted as an expert in Colorado in respect to inspecting the property and advising in regard to adjustment of loss.

In *Connelly* v. *Pickard*, 17 Ohio Dec. 116, it was held that an agent who collected rents and who for compensation recommended an unauthorized insurance company could not be held to be within the provisions of the Ohio Statutes, which prohibited in any manner aiding in the transaction of the business of insurance of any unauthorized company, unless duly authorized by the company and duly licensed by the Superintendent of Insurance. The court said: "The test is whether the person thus aiding is acting in such capacity that his is the act of the company."

Feagin v. *Royal Ins. Co.* (So. Car. 1923), 122 S. C. 532, 115 S. E. 808. Held, a statute declaring that a person who inspects a risk is an agent of a foreign insurance company, has no application except where the person making the inspection was then acting for the company.

In *State* v. *Geddes* (Md. 1915), 127 Md. 166, 96 Atl. 353, it was held that a clerk employed by licensed insurance brokers, who delivered a policy of insurance and collected a premium was not violating the state statute, although he did not have any license. The court held that the statute was intended to apply only to parties who negotiated contracts of insurance and not to parties who simply did some incidental act in connection with the business.

In *First National Bank of Ottawa* v. *Renn* (Kans. 1901), 63 Kans. 334, 65 Pac. 698 it was held that for a mortgagee, at the request of the mortgagor and his purchaser, to undertake to secure and to secure the consent of the foreign unlicensed insurer to assignment of the policy to the purchaser was not an application for insurance, nor was it "aiding a foreign unlicensed insurance company in transacting business in Kansas." The policy covered property in the state.

In *People* v. *Imlay*, 20 Barb. (N. Y.) 68, it was held that a statute prohibiting any person from in any manner aiding in transacting the insurance business of any company or association not incorporated under the laws of New York did not apply to anyone except one who was in fact acting for the company and so acting in New York, and did not apply to one who was acting solely as agent for the insured.

In the following cases the offending person was actually a broker or agent and had done some overt act of insurance in the state.

Nutting *v.* Massachusetts, 183 U. S. 553;
American Fire Ins. Co. *v.* King Lumber & M. Co., 250 U. S. 2;
Hooper *v.* California, 155 U. S. 648;
Cain *v.* State (1913) 103 Miss. 701;
Bartlett *v.* Rotchschild (Pa. 1906), 214 Pa. 421;
Anderson *v.* Northwestern Fire & M. (N. D. 1924, not yet officially reported but appearing in 201 N. W. 514);
State *v.* Arlington (N. C. 1911) 157 N. C. 640;
Vertrees *v.* Head & Matthews (Ky. 1910), 138 Ky. 83.

II.

The insurance in these cases is by virtue of a Michigan contract. The automobile dealers do not negotiate, effect or consummate the insurance contracts. The insurance company transacts no business in Wisconsin or Maine. The Commissioners of Wisconsin and Maine have no jurisdiction.

Because the operative effect of the Michigan blanket policy is postponed until the retail sale of a Chrysler car, both of the lower courts therefore conclude that the policy is not a completed insurance contract. The Maine court says (9 Fed. 2nd, 674, 676):

> "The Michigan contract appears to us not to be a completed insurance contract but an agreement for future insurance,"

and the Wisconsin court says (9 Fed. 2nd, 666, 671):

> "Having these facts in mind and the thought that insurance is a matter of contract between persons,

> we are confronted immediately by the fact that the Michigan contract is not an insurance *in praesenti* but rather a contract to insure in the future."

In order to disprove the claim of plaintiffs-appellants that the insurance is automatically effective, by virtue of the Michigan blanket policy, both of the lower courts, without warrant, ascribed to the plaintiffs-appellants the theory of insurance as a commodity.

A statement to this effect by the Wisconsin court is quoted approvingly by the Maine court (9 Fed. 2nd, 666, 670, 9 Fed. 2nd, 674, 679):

> "One of the important details of this contract and plan is that the effective date of the insurance is postponed until a car is sold at retail. * * * When so sold, complainant claims, the insurance becomes automatically effective, by virtue of the Michigan contract. Plainly the theory of the complainant is that this insurance is something that attaches to and follows an automobile upon its course through the market as though a part or accessory, and that the dealer who sells the car has nothing to do with the insurance item; he merely sells the car with all its equipment including the insurance."

No such theory was or is urged by the plaintiffs-appellants. It would be fatal to their cases because then the dealer might well be regarded as selling it as an accessory to the car. On the other hand, both the Wisconsin and Maine courts have unconsciously, or unwittingly, adopted the very theory they ascribe to the plaintiffs. In support of its conclusion that the dealer is an insurance agent, the Wisconsin court says (and the Maine court endorses the statement): "He sells the car including the insurance."

These courts therefore must have thought of the insurance as a part of the car—an accessory—otherwise they could not have concluded that the sale of the car involved also a sale of the insurance.

The postponement of the operative effect of the contract should afford no difficulty in accepting the blanket policy as a completed contract. The operative effect of policies "for whom it may concern" usually are postponed both as to an identification of the property covered and of the person or persons insured. See:

> *Waring* v. *Indemnity Fire Ins. Co.*, 45 N. Y. 606;
> *Rhind* v. *Wilkinson* (1810, C. P. Eng.), 2 Taunt 237, in which latter case it is said that "it is an every day's practice to insure goods on a return voyage long before they are bought."

Henshaw v. *Mutual Safety Ins. Co.* (C. C. N. Y. 1848), 11 Fed. Cas. 1189, 2 Blatchf. 99, in which the court says:

> "This is the ordinary, and, perhaps, the most serviceable class of insurance. Cargoes can be purchased and laden from port to port on trading voyages under the protection of policies already in existence without waiting for the means of obtaining satisfactory insurance after the interest is acquired. The same principle applies to the changeable proprietorship of vessels."

And this Court also said of such policies in *Hagan, et al.* v. *Scottish Union Ins. Co.* (1902), 186 U. S. 423, 430:

> "* * * it is not necessary that at the time of effecting the insurance the person taking it out should intend it for the benefit of some then known and particular individual, but that it would cover the case of one having an insurable interest at the

> time of the happening of the loss and who was intended to be protected at the time the party took out the insurance."

And at p. 433 the Court continues:

> "The words 'on account of whom it may concern' do not refer to those interested in the policy simply at the time it is taken out. The terms refer to the future. It is not a question of the persons concerned when it is taken out, but of those who may be concerned when the loss may occur, and who were within the contemplation of him who took out the insurance at the time that he did so. It is on account of those who in the future, at the time of the happening of a loss, have the insurable interest and in regard to whom the policy will be applied. We think this is the common sense interpretation of the language used, and that it is justified and required by the authorities, many of which are cited in *Hooper* v. *Robinson*, 98 U. S. 528."

It is accepted law in this country ever since *Paul* v. *Virginia*, 8 Wall. 168, that insurance is a contract and not a commodity. It is not a subject of barter and sale. It is a contract of indemnity to a person and not to property. Nevertheless, insurance is in respect to property. The lay language used in insurance circles properly expresses the legal concept, i. e. "the person is insured and the property covered". But this does not justify the conclusions of the Wisconsin and Maine courts that there is no contract of insurance unless a person is insured *eo instanti*. Such a conclusion resulted from those courts having mistaken the necessity of an insurable interest at the time of loss for an insurable interest at the time of the contract. It

is well settled law that an insurable interest at the time of loss is sufficient.

Hooper v. *Robinson,* 98 U. S. 528;
Henshaw v. *Mutual Safety Ins. Co.* (C. C. N. Y. 1848), 11 Fed. Cas. 1189; 2 Blatchf. 99;
Duncan v. *China Mutual Ins. Co.,* 129 N. Y. 237.

The lack of an insurable interest at the time of making the contract is no longer regarded as invalidating the contract as a wagering one against public policy. *Sun Insurance Office of London* v. *Henry Merz,* 64 N. J. Law 301.

It is customary for insurance companies, and particularly those covering marine hazards (automobile insurance is a development of marine insurance), to insure unknown persons in respect to after acquired property and the insured's interest need not be connected with or derived from the person procuring the policy and paying the premiums therefor. Policies of this nature—issued "for whom it may concern"—have been used by marine insurance companies for many years and more recently have been extended to business generally

In *DeHahn* v. *Hartley* (1786 K. B. Eng.), 1 D. & E. Term Rep. 343, the policy was drawn in London on a ship then at Liverpool to cover ship and cargo at and from the west coast of Africa to the British West Indies.

Rhind v. *Wilkinson* (1810 C. P. Eng.), 2 Taunt 237;
Wilson & Co. v. *Hartford Fire Ins. Co.* (Missouri Sup. Ct. 1923), 300 Mo. 1, 254 S. W. 266;
Hooper v. *Robinson,* 98 U. S. 528.

The case of *Carpenter* v. *Providence Co.,* 16 Peters 495, 503, 41 U. S. 495, cited by the lower courts, is not authority

for the proposition advanced by those courts that the Michigan blanket policy is not an insurance contract because at the time of its execution the purchasers were unknown and that there could be no contract as there were no persons insured. An examination of that case as well as the cases cited in and relied upon by it, including the quotation from Lord Hardwicke, will convince this court that the law of the cases do not apply to the facts of the instant cases under consideration.

In *Carpenter* v. *Providence Co.*, 16 Peters 495, 41 U. S. 495, Mr. Justice Story said that the mortgagor of property might be insured up to the value of the property while a mortgagee could be insured only to the extent of the debt owing to him; that each might separately insure to the extent of his own distinct interest; that the mortgagor cannot recover on the policy issued to the mortgagee because the insurance company paying the mortgagee is subrogated to his claim against the mortgagor, nor could the mortgagee recover under the policy issued to the mortgagor as the policy is a contract with the mortgagor only and not an incident of the property so as to extend to those having an interest in it including the mortgagee. In *Lynch* v. *Dalzel*, 3 Brown Parl. Cases, 497 (Eng. 1729), one of the cases relied on by Mr. Justice Story, it was held that an assignee could not sue on a policy which was expressly made non-assignable. In *Sadlers Co.* v. *Badcock*, 2 Atkyns 554, 556 (Eng. 1743), from which the quotation by Lord Hardwicke is taken, the policy was issued to a lessee and before the policy expired the lease terminated and the property passed to another lessee. The court denied recovery to the second lessee as it said the person (the first lessee) and not the property was insured and furthermore the lease having

expired there was nothing to indemnify as there was no insurable interest at time of loss.

Rayner v. *Preston*, L. R. 18 Ch. Div. 1 (Eng. 1881 C. A.), which has been misinterpreted by many state courts, could have been more aptly cited as an authority than the cases relied on by the lower courts. That case held that insurance was a personal contract and did not run with the land. The dissenting opinion by Lord Justice James that the vendor of the property held the policy as a trustee for the vendee has been made the basis of many opinions in American courts that the vendee being unable to get the destroyed property in accordance with his contract was equitably entitled to the indemnity of the vendor for that property afforded by the policy. The law of the case, however, was right in that the policy named the vendor only and did not extend to the vendee. If the policy had contained the provision that Lord Justice James tried to read into it, i. e., that it was issued to the vendor for account of the vendee or for account of whom it may concern, there would have been no disagreement between him and Lord Justice Brett.

Mr. Justice Story also in *Columbia Insurance Company* v. *Lawrence* (U. S. 1836) 10 Peters 507, 35 U. S. 507 laid down the rule that neither by the principles of law nor equity had a mortgagee a right to the benefits of a contract underwritten for the mortgagor because it was a personal contract and not an incident of the mortgage.

Usually the insurer intends to indemnify only the person named in the policy and the court may properly presume such an intention if it is not expressly stated to the contrary because the contract being aleatory it would increase the moral hazard and risk of the insurer without his

consent to extend the policy to others than those provided for in it. But the insurer may provide for others in its policy and there is no authority for limiting the benefits of the agreement to only the contracting parties.

While the lower courts assume the premise that the Michigan blanket policy is not a contract, they nevertheless rely upon the postponement of the operative effect of that policy as conclusive evidence that through the instrumentality of the dealers the insurance company secured an "adoption" of the insurance by the purchasers—thus making the dealers amenable to the insurance regulatory statutes of the states. It is not clear in what sense these courts make use of the term "adoption". They seem to intend it, however, as synonymous with the "making" of several distinct contracts by the purchasers at the time of the retail sale. The cases cited, however, are authority for an agency ratification theory, i. e., that the purchaser by accepting the benefits of the insurance ratifies the acts of Chrysler as an agent in having effected the contract.

The essential elements of the making of a contract are entirely lacking between the purchaser and the insurance company when the car is purchased at retail. Otherwise the arrangement would have to be considered as a continuing offer to be accepted or rejected by the purchasers and such an offer could be recalled by the insurance company before its acceptance, a position which provisions in the blanket policy, however, preclude the insurance company from taking. Furthermore, the purchaser might not know of the blanket policy until after the happening of a loss. It is well settled that under such policies the assured is indemnified even though he did not know of the insurance until after the loss.

Hooper v. *Robinson,* 98 U. S. 528;
Hagan v. *Scottish Union Ins. Co.,* (1902) 186 U. S. 423;
Fire Insurance Assn. of England v. *Merchants & Miners Transportation Co.,* (1886) 66 Md. 339.

If, however, by adoption these courts mean the making of several new contracts and the date of the adoption should be postponed until after the happening of the loss, there would then be the anomalous position of an assured making a contract of indemnity when there was nothing to indemnify—the loss having already occurred—which would do violence to the fundamentals of insurance as an indemnity contract. Furthermore, the purchaser is not the only beneficiary of this insurance. The dealer, the financing companies, and the parties to whom the deferred obligations of the purchaser might be subsequently negotiated are all beneficiaries. They may reside at distant points. In fact, a dealer in Wisconsin or Maine might sell the purchaser's installment obligations to the Commercial Credit Company at Baltimore, Maryland and that company might pledge those obligations with a trust company at New York as security for its collateral trust notes sold to note holders throughout the country. All of these would be beneficiaries of the insurance. To follow the theory of the lower courts, it would be necessary, therefore, to consider the contract as having been made in each of the several jurisdictions upon the parties becoming beneficiaries thereunder. Moreover, a purchaser might refuse to accept the insurance on the day of the purchase of a car and obtain his own insurance. By the provisions of the blanket policy

it then becomes excess insurance protecting the purchaser to the extent that he is unable to get recovery from the insurance effected by himself. If by adoption it is meant that the purchaser makes a contract in Wisconsin and Maine at the time of the purchase of a car, there would arise then the curious situation of the offeree declining an offer at the time that it was made but the offeror being irrevocably bound to keep the offer open until such future time as the offeree might change his mind.

The purchaser is not a contracting party. He is a beneficiary of a contract made between two other parties in a foreign state and has the right to enforce the contract as such third party.

Symmers v. *Carroll*, 207 N. Y. 632, 101 N. E. 698.
Waring v. *Indemnity Fire Ins. Co.*, 45 N. Y. 606;
Wilson & Co. v. *Hartford Fire Ins. Co.* (Missouri Sup. Ct. 1923) 300 Mo. 1, 254 S. W. 266;
Sleeper v. *Union Ins. Co.*, 65 Me. 385.

The difficulties in which the lower courts became involved can be avoided if it is ever kept in mind that insurance is simply a contract and that the expressed intentions and agreements of the parties to that contract must be respected if not contrary to public policy. The insurance company is liable on its express undertakings in a contract. *Henshaw* v. *Mutual Safety Ins. Co.* (C. C. N. Y. 1848), 11 Fed. Cases 1189; 2 Blatchf. 99. The insurance company in these cases would be liable on its express undertakings in the blanket policy. We find, therefore, as the Main court properly said, that the blanket policy itself "constitutes the vitals of the controversy". That policy unquestionably

is a Michigan contract. It was made, delivered, and was to be performed at Detroit, Michigan. The contracting parties—Chrysler and the Insurance Company—were both residents of Michigan and were non-residents of Wisconsin and Maine. The automobile dealer in Wisconsin or Maine did not participate in the making or the execution or the performance of that contract. The blanket policy names as assured the "Chrysler Sales Corporation, of Detroit, Michigan, and/or for account of whom it may concern, as hereinafter specified." The certificates signed and mailed from Detroit, Michigan, by the insurance company recite that under the blanket policy issued to Chrysler "covering for account of whom it may concern" the automobile sold or leased and delivered to the purchaser named in the certificate is insured against the hazards described in the blanket policy.

The certificate is a mere summary and recital of the provisions in the blanket policy, and there are no warranties by the purchaser. He is simply advised of the conditions precedent to recovery. The Maine court is in error when it states that the purchaser by accepting a certificate affirmatively makes warranties.

The issue of the certificate, according to the very terms of the blanket policy, is not essential to the effecting of the insurance. It is merely a memorandum to evidence something that had already sprung into existence before its issue.

There is a distinction between a certificate issued under the policy and the policy itself. Diamond Alkali Export Company *v.* Bourgeois, 3 K. B. Div. (1921), 443. In that case the vendor under contract of sale of goods tendered with the invoice for the sale of the goods a certifi-

cate of insurance issued under an open policy with the American Insurance Corporation, and the buyer refused to accept the same upon the ground that his contract called for a policy of insurance, and the certificate was not a policy. The court said (at page 455):

> "I assume that this document (which is not stamped) was what is known as a floating policy issued by the insurance company to D. A. Horan. Now a certificate is not a policy. It does not purport to be a policy. * * * It is a certificate that a policy was issued to D. A. Horan, and it incorporates the terms of that policy. * * *"

and to the same effect see:

> Conner *v.* Manchester Assurance Co. (C. C. A. 9), 130 Fed. 743.

Even though the dealer had been a contracting party to the insurance, that circumstance would not have subjected him to the regulatory statutes of Wisconsin. The dealer has the largest interest in an automobile at the time of its retail sale in at least eighty per cent. of the transactions. Most automobiles are sold on the deferred payment plan. The purchaser pays a small initial down payment in cash and gives his obligations to the dealer for his deferred installments. The dealer in most cases sells or discounts these obligations to a finance company or a bank and endorses and assigns the paper, generally guaranteeing its payment; sometimes, however, endorsing without recourse, according to his financing arrangements. If the dealer had himself taken out the blanket policy at Detroit, Michigan, instead of accepting the benefits of a contract already in existence between two non-residents, he would

have been well within his constitutional rights. Furthermore, he might have notified the Insurance Company before the risk attached from his place of business in Wisconsin or Maine to Detroit, Michigan, and he might have added the cost of insurance to the price of the cars which he sold. Such an arrangement would not have been unlike that made by Allgeyer in the case of *Allgeyer* v. *Louisiana,* 165 U. S. 578. In that case Allgeyer was doing business on a c. i. f. basis, when he sold the goods at a price under which he was obligated to provide the insurance and freight. The insurance there was primarily for the benefit of the purchasers of the cotton, but also operated for the benefit of the holders of the bills of exchange, just as the insurance in the present cases may be for the benefit of the purchasers of the automobiles, but also operates for the benefit of the dealers and the holders of the purchasers' instalment obligations.

In the present case, however, the position of the Chrysler dealer is even more secure than was that of Allgeyer. The insurance is not dependent upon any notice mailed or given by a dealer or upon any act done by him in the State of Wisconsin or Maine except the sale of the merchandise. In the Allgeyer case the risk attached upon the sale *and the report,* according to an arrangement made by Allgeyer and for which Allgeyer paid a premium, which premium he incorporated in the sale price of his merchandise. In the present case the insurance attaches upon the sale of the cars, not by reason of any arrangement made by the dealer, but by reason of an arrangement made by the dealer's vendor—Chrysler—who made the contract and pays the premium in a foreign state.

The dealer equally as well as Allgeyer is entitled to the guaranties and protection of the Federal Constitution in conducting his business as an automobile merchant.

Insurance Company Is Not Doing Business in Wisconsin and Maine.

The question whether the Palmetto Fire Insurance Company is doing business in Wisconsin and Maine has only an indirect bearing on whether the acts of the dealers subject them to the regulatory statutes governing insurance. Admittedly the insurance company was not licensed by the states to do business within those states. The dealers had no authority to bind the insurance company, did not presume to represent and in fact had no communication with it. The insurance company could not, therefore, be regarded as transacting business within the states so as to subject itself to liability for taxes or bring the insurance on Chrysler cars within the statutes.

St. Louis Cotton Compress Co. *v.* Ark., 260 U. S. 346;

Hunter *v.* Mut. Res. Life Ins. Co., 218 U. S. 573;

Prov. Sav. & Life Ass. Soc. *v.* Kentucky, 239 U. S. 103;

State *v.* Int. Paper Co. (Vt.), 120 Atl. 900, 96 Vt. 506;

Stone *v.* Old Colony Street Ry. Co. (Mass. 1912), 99 N. E. 218, 212 Mass. 459.

Nor would the acts of the dealers be sufficient to regard the insurance company as doing business within the states for purposes of service of process.

Minnesota Commercial Men's Assn. *v.* Benn, 261 U. S. 140;
Peoples Tobacco Co. *v.* American Tobacco Co., 246 U. S. 79;
Pembleton *v.* Illinois Commercial Men's Assn. (Ill. 1919), 124 N. E. 355, 289 Ill. 99.

The dealers were independent merchants conducting their own business and although the insurance company might have been benefitted thereby that would not be doing business within the state nor constitute the dealers its agents.

Allgeyer v. Louisiana, 165 U. S. 578;
Philadelphia & R. R. Co. *v.* McKibbin, 243 U. S. 264;
Rosenberg Bros. *v.* Curtis Brown, 260 U. S. 516.

There is no warrant either from the facts, the state statutes, or law generally to support the threatened acts of the Commissioners against the dealers as insurance agents.

III.

If the Wisconsin and Maine statutes should be so construed as to penalize the acts done by the Chrysler dealers in these cases, they would be unconstitutional to that extent.

Whether or not the Wisconsin and Maine statutes, as applied to the facts in these cases, are unconstitutional depends upon whether these cases are to be distinguished from the principle laid down in *Allgeyer* v. *Louisiana,* 165 U. S. 578; *Minn. Commerical Men's Assn.* v. *Benn,* 261 U. S. 140; *Aetna Life Ins. Co.* v. *Dunken,* 266 U. S. 389; *New York Life Ins. Co.* v. *Head,* 234 U. S. 149, or whether they are

controlled by the holdings of this court in *Hooper* v. *California,* 155 U. S. 648; *Nutting* v. *Massachusetts,* 183 U. S. 553.

In *Hooper* v. *California,* 155 U. S. 648, Hooper was held to be the agent of both the insured and the unlicensed insurance company. Hooper in California delivered a policy to Mott and collected the premium which he (Hooper) transmitted to his principal at New York. In *Nuttting* v. *Massachusetts,* 183 U. S. 553, a licensed broker solicited the insurance in Massachusetts, procured the policy and mailed it in Massachusetts to the assured.

In the cases now before this court the dealer does not deliver a policy nor does he collect or transmit a premium. He does no act whatsoever within the states of Wisconsin and Maine except to sell automobiles—the conduct of his own private business.

In fact the Chrysler dealers in Wisconsin and Maine do less than was done by *Allgeyer in Allgeyer* v. *Louisiana*—165 U. S. 578. The Chrysler dealers sell their own property—automobiles; Allgeyer sold his own property—cotton. The insurance is effective in respect to the automobiles sold under the Michigan blanket policy, regardless of anything the dealer might or might not do; the insurance was effective in the Allgeyer case when and only when Allgeyer mailed in Louisiana to the insurance company in New York a notice giving a description of the goods, amount desired in the shipment, name of the purchaser, and name of the vessel, etc. The contract of insurance under which Allgeyer's property was insured was made by Allgeyer in New York, while the policy in respect to which the Chrysler cars are covered was made by the dealers' vendor—Chrysler—at Detroit, Michigan. If the Chrysler dealers

had themselves contracted for the insurance at Detroit, Michigan, they would be more nearly within the Allgeyer case, but they even did less than did Allgeyer. As a matter of fact, they knew nothing of the insurance nor the negotiations leading up to the contracting for it until the insurance was announced by the Chrysler Sales Corporation at Detroit, Mich.

In the case of *Aetna Life Insurance Company* v. *Dunken*—266 U. S. 389, this court held a policy of life insurance to be a Tennessee and not a Texas contract. A term policy has been taken out in Tennessee and gave the option to the assured to change the policy to another form of insurance within a certain time upon paying the difference in premiums with interest. The Texas statute provided that a policy payable to a resident or inhabitant of Texas should be deemed a Texas contract. The assured moved to Texas and then elected to exercise his option. A new policy was mailed from Tennessee to him in Texas, and the Texas state court held it to be a Texas contract. This court reversed the state court and said 266 U. S. 389 at p. 399:

> "The second policy here was issued in pursuance of, and was dependent for its existence and its terms upon, the express provisions of the contract contained in the first one. By those provisions, upon the simple application of the insured, the new policy must issue. Nothing was left to future agreement. The terms of the new policy were fixed when the original policy was made. In effect, it is as though the first policy had provided that, upon demand of the insured and payment of the stipulated increase in premiums, that policy should, automatically become a twenty-payment life commercial policy. It was issued not as the result of any new negotiation

> or agreement, but in discharge of pre-existing obligations. It merely fulfilled promises then outstanding, and did not arise from new or additional promises. The result, in legal contemplations, was not a novation, but the consummation of an alternative specifically accorded by, and enforceable in virtue of, the original contract."

In the cases before this court, the automobiles are insured under a blanket policy executed, delivered and for which the premiums are paid at Detroit, Michigan. By the provisions of that contract, coverage exists irrespective of any other paper being sent out or anything being done other than the purchase of a car. The coverage does not arise by virtue of a contract made by the purchaser of a car or the dealer selling the car, but by reason of a contract made by a third party—Chrysler at Detroit, Michigan—for the benefit of "whom it may concern".

In the Dunken case the assured had to make an election in Texas and had to pay an additional premium there, and a new policy was mailed to him there. In these cases there is no election or option. The certificates which are sent out to the purchasers and other parties interested are unnecessary to the coverage. They are not insurance policies but merely are memorandums of information concerning the blanket policy. They are issued and mailed from Detroit, Michigan, in pursuance of and are dependent for their existence upon all the express provisions of a blanket policy previously made by the Chrysler Sales Corporation at Detroit, Michigan. By that policy nothing is left for future agreement by the retail purchasers. The terms of the certificate are fixed by the blanket policy. The certificates are not issued as a result of any new negotiations or

agreement but in discharge of the pre-existing obligations contained in the Michigan blanket policy. They merely fulfill promises then outstanding and do not arise from any new or additional promises. Accordingly as in the *Aetna Life Insurance Co.* v. *Dunken* case, the certificate is not a new contract and is not subject to the Wisconsin and Maine statutes, but is controlled entirely by Michigan law.

In the case of *Minnesota Commercial Men's Association* v. *Benn*, 261 U. S. 140, the policies which were mailed from Minnesota to the assured in Montana were Minnesota contracts, notwithstanding that the application for these policies had been solicited by members of the association in Montana, who made such solicitations in order to obtain prizes offered by the Association. They were not, however, authorized to bind the Association. This court held that the contracts were Minnesota contracts, and that the Association was not doing business in Montana. The Chrysler automobile dealers are not authorized to bind or act on behalf of the Palmetto Fire Insurance Company; they are not the agents for anyone. The dealers are their own principals in the sale of automobiles. It follows, therefore, that the Palmetto Fire Insurance Company is not doing business within the States of Wisconsin and Maine, and that the insurance coverage on the cars sold in Wisconsin and Maine is under the Michigan contract, and the laws of Wisconsin and Maine cannot be applied to the blanket policy, a Michigan contract, any more than the law of Missouri could be applied to the New York contract in the case of New York Life Insurance Co. *v.* Head, 234 U. S. 149; New York Life Insurance Co. *v.* Dodge, 246 U. S. 357. More in fact was done in those cases than in the cases now before this court. The applications for the loans were signed in

Missouri by the applicant; the policy (which had been taken out in Missouri and was a Missouri contract) was delivered as collateral for a loan in Missouri; the insurance company was licensed to do business in Missouri, and the balance of the premiums paid on the policy in connection with the loan transaction were paid in Missouri. Notwithstanding these facts the loan agreement was upheld as a New York contract.

There were no applications made in Wisconsin or Maine by the dealers or the purchasers. There are no policies delivered in those states. Nothing is done except the selling of a car, and then the coverage in respect to that car is automatic as in accordance with the provisions contained in the blanket policy executed and delivered and to be performed at Detroit, Mich. If the Wisconsin and Maine statutes can be construed to be so far-reaching as to penalize the dealers for selling cars as independent merchants because third parties in a foreign state have effected insurance in respect to them, it is submitted that under the authority of the decisions of this court, those statutes are to that extent void.

Burden on Interstate Commerce.

The States of Wisconsin and Maine have no right or power to regulate the business of the Chrysler Sales Corporation, a foreign corporation, at Detroit, Michigan. Chrysler has the right to name its own price for the commodity sold by it in interstate commerce and to determine the elements that go to make up that price. The States of Wisconsin and Maine have no voice or control in what Chrysler may do with the proceeds of the sale of its own

products in interstate commerce. The States of Wisconsin and Maine have no authority to interfere with the constitutional right of Chrysler to make a contract of insurance, or otherwise, in a foreign state. The states have a right to regulate the acts of automobile dealers selling Chrysler cars within their jurisdiction, but this right cannot be used to accomplish a forbidden result. See

> *Fidelity Deposit Co. of Maryland* v. *Tafoya* (Decided March 15, 1926; not yet officially reported but appearing in 46 Sup. Ct. Reporter 331).

The attempts of the States of Wisconsin and Maine through their Commissioners of Insurance to prevent the retail sale of Chrysler cars by dealers in those states, and because those dealers purchased the cars at wholesale in interstate commerce from Chrysler who had made a contract of insurance in respect to them is in effect an attempt by the states to place a burden on interstate commerce under the guise of regulating intrastate business. Freedom to sell intrastate of property purchased interstate is part of interstate commerce and arbitrary discriminatory interference with such freedom is an obstruction on interstate commerce. See:

> *Dahnke-Walker Mill Co.* v. *Bondurant,* 257 U. S. 282, 290;
> *Shafer* v. *Farmers Grain Co.,* 268 U. S. 189;
> *Alpha Portland Cement Co.* v. *Massachusetts,* 268 U. S. 203;
> *Leisy* v. *Hardin,* 135 U. S. 100;
> *Lyng* v. *Michigan,* 135 U. S. 161;
> *Sonneborn Bros.* v. *Cureton,* 262 U. S. 506, 513.

While insurance is not in itself a commodity, nevertheless when the cost of it has entered into the wholesale price in interstate commerce of the commodity, the attempt by the states to segregate a fraction of that wholesale price and to regulate it as a premium of insurance is an interference with the price itself and therefore a restraint on interstate commerce of the commodity. See:

Thames & Mersey Ins. Co. v. *U. S.*, 237 U. S. 19.

And the attempt by the states to prevent the sale of a commodity intrastate purchased by the retail dealer interstate because the wholesale vendor paid a premium of insurance to a non-admitted insurance company amounts to an arbitrary forcing of the insurance company to pay tribute to the state. See:

St. Louis Cotton Compress Co. v. *Arkansas*, 260 U. S. 346.

The Chrysler automobile dealers in Wisconsin and Maine as independent merchants have a right to purchase automobiles in interstate commerce and a right to sell the cars intrastate; their business is legitimate and useful and while subject to reasonable regulation by the states, nevertheless cannot be arbitrarily interfered with. See:

Weaver v. *Palmer Bros. Co.* (Decided March 8, 1926; not yet officially reported but appearing in 46 Sup. Ct. Reporter 320).

Conclusion.

The insurance plan inaugurated by Chrysler Sales Corporation under its blanket policy with the Palmetto Fire Insurance Company was an ecomonic and legal device to meet the needs of the automobile industry and to correct abuses in the marketing of automobiles. It is eminently sound.

See:

Yale Law Journal, June 1926, Vol. 35, pages 989, 997; University of Pennsylvania Law Review, March 1926, Vol. 74, page 491.

The dealers as such did not participate in the originating or in the operation of the plan, and in fact knew nothing about it until it was announced. As independent merchants they merely bought goods at wholesale and sold them at retail. In conducting their legitimate business they did not violate any of the state insurance statutes, and if these statutes should be construed as applicable to the business of the automobile dealers, they are to that extent unconstitutional and void.

At the argument of the case in the lower courts, it was urged that the insurance plan "evaded" the state statutes. Such an argument should be given no weight, as it has no bearing upon the questions in the case. If the statutes are not being violated, they are not being "evaded". It has been recognized by this court that it is proper for a person in the exercise of his federal constitutional rights to make contracts that do not violate and are beyond the jurisdiction of the state statutes. In St.

Louis Cotton Compress Company *v.* Arkansas, 260 U. S. 346, this court in its opinion said that the policy was taken out in Missouri "because the rates were less than those charged by companies authorized to do business in Arkansas". It might be urged that the rate laws of Arkansas were "evaded" by the making of a Missouri contract insuring Arkansas risks. Admittedly also, in New York Life Insurance Co. *v.* Head, 234 U. S. 149, and New York Life Insurance Co. *v.* Dodge, 246 U. S. 357, the loan agreements in these cases were so formulated as to make them New York contracts and thus render unnecessary compliance with the Missouri statutes. It has always been recognized that when alleged state rights come into conflict with Federal constitutional rights, the alleged state rights must yield.

It is submitted that the interlocutory decrees of the courts below should be reversed and interlocutory injunctions allowed pending a final hearing.

Respectfully,

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APPENDIX.

A.

Wisconsin Statutes Cited in Brief.

203.07 Unauthorized insurance void. 1. All future contracts of insurance against the risk of loss or damage by fire or lightning upon property in this state shall be held to be made and effected within this state.

2. No unauthorized fire insurance company or other unauthorized insurer shall hereafter make or issue, directly or indirectly, any policy of insurance on property in this state, except as specifically authorized by law. All such contracts are declared to be unlawful, void, and unenforcible, and no action in law or equity shall be maintained on any such contract in any court.

201.41 Fees; conditions; revocation of license. 1. No insurance corporation shall transact any insurance business in this state without first having paid the license fees and obtained the license therefor as required by law.

2. (a) If any such corporation shall remove or make application to remove into any court of the United States any action or proceeding commenced in any court of this state upon a claim or cause of action arising out of any business or transaction done in this state; or (b) if it shall violate or fail to comply with any provision of law applicable thereto; or (c) in case its capital shall be impaired to the extent of twenty per cent and shall not be made good within such time as the commissioner of insurance shall require, according to law; (d) it shall be the imperative duty of the commissioner to revoke any and every authority, license or certificate granted to such corporation or any agent thereof to transact any business in this state, and no

such corporation or agent thereof shall thereafter transact any business of insurance in this state until again duly licensed.

3. In case such revocation shall be made because of the removal of any action to any court of the United States no renewal, license or certificate of authority shall be granted to such corporation for three years after such revocation.

4. Whenever any such license shall be revoked the commissioner shall give notice of such revocation by mail to every agent of such corporation who shall have obtained any certificate of authority therefor and shall also publish notice thereof in the official state paper.

5. If an insurance company shall hold a certificate of authority to transact more than one kind of insurance, the commissioner shall have power to annul or revoke such certificate as to one or more kinds of insurance authorized therein for the same cause and in the same manner that he is authorized to annul or revoke such certificate for all kinds of insurance authorized therein.

201.44 Agents to be residents; exceptions; penalty. 1. No policy of insurance shall be issued or delivered in this state by any company, except through an agent who shall be a resident of this state and hold a certificate of authority under section 209.04, for the kind of insurance effected by such policy.

2. In case of fire insurance, the agent shall countersign and enter the policy in a permanent record to be kept by him for that purpose. Such agent shall be paid the commission on the policy.

3. The books of every person transacting or purporting to transact the business of an insurance agent shall at all times be open to the inspection of the commissioner of insurance, his deputy or examiners, and a refusal to permit

such inspection shall be prima facie evidence of a violation of this section.

4. This section shall not prevent any insurance placed in violation thereof taking effect.

5. Any company or person soliciting or placing insurance without complying with this section, shall, in addition to other penalties provided by law, be liable personally upon such policy or contract of insurance to the same extent as the company issuing the same.

6. This section shall not apply to:

(a) Policies issued directly from the home office of any company organized under the laws of this state.

(b) Policies covering property in transit while in the possession or custody of any common carrier, or the rolling stock or other property of any common carrier used and employed by it as a common carrier of freight or passengers.

(c) Policies issued directly, by any mutual company or any association doing business on the inter-insurance or reciprocal plan, on which no commissions are paid, except to a home office manager or an attorney in fact for such company or association, as specifically authorized by the insured.

7. Any company or agent violating this section shall be subject to the penalty provided by subsection 5, of section 207.01.

209.04 Agent's licenses; exceptions. 1. No person, officer, or broker, agent or sub-agent of any insurance corporation of any kind required to pay any tax or license fee to the state shall act or aid in any manner in transacting the business of or with such corporation in placing risks or in collecting any premiums or assessments or effecting insurance therein, without first procuring from the insur-

ance corporation a certificate of authority; nor shall any such person, officer, broker, agent or sub-agent, after such certificate shall have expired, or after revocation by the commissioner of insurance of such certificate or of the license of such corporation and until a new certificate or license shall have been issued to him, do or perform any such act for or in behalf of any insurance corporation. * * *

* * * * * *

4. Any person violating the provisions of this section shall be punished by a fine of not more than five hundred dollars for each offense. Any company violating subsection (2) of this section shall pay five times the amount of fees upon each license included in such violation.

209.05 Who are agents. Every person or member of a firm or corporation who solicits insurance on behalf of any insurance corporation or person desiring insurance of any kind, or transmits an application for a policy of insurance, other than for himself, to or from any such corporation, or who makes any contract for insurance, or collects any premium for insurance, or in any manner aids or assists in doing either, or in transacting any business of like nature for any insurance corporation, or advertises to do any such thing, shall be held to be an agent of such corporation to all intents and purposes, unless it can be shown that he receives no compensation for such services. This section shall not apply to agents of licensed fraternal beneficiary societies, or mutual fire insurance companies of this state except those organized under sections 201.02, 201.04 and 201.16.

348.488 Penalty for unauthorized insurance. Any unauthorized insurance company or other unauthorized insurer which shall hereafter take or receive any application for insurance in this state, or shall receive or collect a premium on any part thereof for such insurance, shall be punished by a fine of not more than five thousand dollars.

Any officer, agent, solicitor, or broker, or other employe of any unauthorized insurance company or other unauthorized insurer who shall take or receive any application for insurance in this state, or shall receive or collect a premium or any part thereof for such insurance, shall be guilty of a felony, and shall be punished by a fine of not more than five hundred dollars, or imprisonment in the state penitentiary for one year, or by both such fine and imprisonment.

B.

Other Wisconsin Statutes.

76.33 Fire companies; license fees, reports. Any company not authorized to do business in this state, which shall transact an insurance business in this state shall pay to this state a tax computed upon the same basis as prescribed in this chapter for authorized insurance companies doing the same kind of business, and on default of any such company in the payment of such tax before the first day of March next succeeding, the insured shall pay such tax. Every person paying more than one hundred dollars premiums to any one such company in any year shall report the same in writing by mail to the commissioner of insurance before the first day of March next succeeding, and if such report be not made and such tax remains unpaid for sixty days after the said first day of March, the tax shall be increased by one-tenth for every month during which such tax remains unpaid after the expiration of said sixty days.

201.38 Foreign companies; conditions of admission. 1. No company incorporated under the laws of any other state or of any territory or of any foreign government or other insurer having its home office outside of this state shall, directly or indirectly, take risks or transact any business of insurance in this state except upon compliance with and maintenance of the following requirements:

2. (a) Any such company or other insurer shall first file a written instrument, duly executed, declaring that it desires to transact the business of insurance in this state and that it will accept a license therefor according to the laws of this state, which shall cease and terminate in case such insurer shall remove or make application to remove into any court of the United States any action or proceeding commenced in any court of this state upon a claim or cause of action arising out of any business or transaction done therein, or in case it shall violate or fail to comply with any provision of law applicable to such insurer, or in case its capital shall be impaired to the extent of twenty per cent, and shall not be made good within such time as the commissioner of insurance shall require, if such commissioner shall, in either case declare its license revoked therefor. * * *

(b) Such insurer shall also appoint, in writing, the commissioner of insurance and his successors in office to be its true and lawful attorney upon whom all legal process in any action or proceeding against it may be served, and in such writing shall agree that any legal process against it which is served on said attorney shall be of the same legal force and validity as if served on the insurer, and that such authority shall continue in force so long as there is any liability outstanding against the insurer in this state whether the license of such insurer to do business in this state shall remain in force or shall be revoked or otherwise terminated. A copy of such writing, duly certified, shall be filed in the office of the commissioner, and copies certified by him shall be deemed sufficient evidence thereof.

(c) Service upon such attorney shall be deemed sufficient service for all purposes upon the principal, and shall be as effectual for all purposes as though made upon a corporation or other insurer existing under the laws of this state. The service of such process shall be made by leaving

duplicate copies thereof in the hands or office of the commissioner of insurance and paying to him for the use of the state a fee of two dollars. A certificate by the commissioner of insurance showing such service and attached to the original or a third copy of such process presented to him for that purpose shall be sufficient evidence thereof.

203.08 Violation of law; bound by contract. Any insurance company, its officers or agents or either of them, violating any provision of sections 203.01 and 203.02 to 203.08, inclusive, by making, issuing, delivering or offering to deliver any policy of fire insurance on property in this state, except as hereinbefore provided, shall be guilty of a misdemeanor and upon complaint made by the commissioner of insurance or any citizen of this state shall, upon conviction thereof, be punished by a fine of not less than fifty dollars nor more than one hundred dollars for the first offense, and of not less than one hundred dollars nor more than two hundred and fifty dollars for each subsequent offense; but any policy so made, issued and delivered shall, nevertheless, be binding upon the company issuing the same, and such company shall thereafter be disqualified from doing any insurance business in this state.

209.11 All insurers to comply with law. No corporation, association, partnership or individual shall do any business of insurance of any kind, or make any guaranty, contract or pledge for the payment of annuities or endowments or money to the families or representatives of any policy or certificate holder, or the like, in this state or with any resident of this state except according to the conditions and restrictions of these statutes. And the term insurance corporation as used in this chapter may be taken to embrace every corporation, association, partnership or individual engaging in any such business.

C.

Maine Statutes Cited in Brief.

Chap. 53, Sec. 121. (As amended by P. L. 1917, Chap. 25). Licenses to agents; agent personally liable for unlawful contracts. The insurance commissioner may issue a license to any person to act as an agent of a domestic insurance company, upon his filing with the commissioner a certificate from the company or association, or its authorized agent, empowering him so to act; and to any resident of the state to act as an agent of any foreign insurance company, which has received a license to do business in the state as provided in section one hundred and five or section one hundred and fifty, upon his filing such certificate. Such license shall continue until the first day of the next July. If any person solicits, receives or forwards any risk or application for insurance to any company, without first receiving such license, or fraudulently assumes to be an agent and thus procures risks and receives money for premiums, he shall be punished by a fine not exceeding two hundred dollars, or imprisonment not exceeding sixty days for each offense; but any policy issued on such application binds the company if otherwise valid. Agents of duly authorized insurance companies may place risks with agents of other duly authorized companies when necessary for the adequate insurance of property, persons or interests. An insurance agent shall be personally liable on all contracts of insurance unlawfully made by or through him, directly or indirectly, for or in behalf of any company not authorized to do business in the state. Nothing herein contained shall require a duly licensed insurance agent or broker to obtain any license for an employee doing only clerical office work in the office of said agent or broker.

Sec. 122. (As amended by P. L. 1917, Chap. 25). Commissioner may license insurance brokers; penalty for acting

without license; may revoke license for cause or upon request of company. The insurance commissioner may license any person as broker to negotiate contracts of insurance for others than himself for a compensation, by virtue of which license he may effect insurance with any domestic company or its agents; or any resident of the state to negotiate such contracts and effect insurance with the agents of any foreign company who have been licensed to do business in this state as provided in sections one hundred and five and one hundred and twenty-one, but with no others; said license shall remain in force one year unless revoked as hereinafter provided. Whoever, without such license, assumes to act as such broker, shall be punished by a fine not exceeding two hundred dollars, or by imprisonment not more than sixty days for each offense. The insurance commissioner, after reasonable notice, may revoke the license of any agent or broker for violation of the insurance laws; or the license of any agent upon receipt of written request therefor from the company filed in the office of said commissioner.

D.

Other Maine Statutes.

Sec. 129. Discrimination or rebate on premiums for fire or liability insurance declared unlawful. No insurance company transacting fire or liability insurance in this state, and no agent or broker transacting fire or liability insurance, either personally or by any other party, shall offer, promise, allow, give, set-off or pay, directly or indirectly, as an inducement to fire or liability insurance on any risk in this state, now or hereafter to be written, any rebate of or part of the premium payable on any policy or of the agent's commission thereon; nor shall any such company, agent or broker, personally or otherwise, offer, promise, allow, give,

set-off or pay, directly or indirectly, as an inducement to such fire or liability insurance any earning, profit, dividends or other benefit, founded, arising, accruing or to accrue on such insurance, or therefrom, or other valuable consideration, or any special favor which is not specified, promised or provided for in the policy of insurance; nor shall any such company, agent or broker, personally or otherwise, offer, promise, give or sell as an inducement to such insurance any stocks, bonds, securities or property, or any dividends or profits accruing or to accrue thereon, nor, except as specified in the policy, offer, promise or give any other thing of value whatsoever, or purchase any stocks, bonds, securities or other property, for which shall be paid or agreed to be paid more than the fair and reasonable value thereof.

Chap. 9, Sec. 57. Taxation of business done with unauthorized companies; rate; exception. All persons, companies, associations or corporations, residing or doing business in this state, that enter into any agreements with an insurance company, association, individual, firm, underwriter or Lloyd, not authorized to do business in this state, whereby said person, company, association or corporation shall enter into contracts of insurance against loss or damage by fire or lightning covering risks or property within this state, with said unauthorized association, individual, firm, underwriter or Lloyd, for which a premium is charged or collected, shall, annually on the first day of December or within ten days thereafter, return to the insurance commissioner of this state a statement under oath for the twelve months preceding on policies or contracts of insurance or indemnity taken by the said person, company, association or corporation. Such statement shall show the amount of insurance and the gross premiums paid to each stock company for insurance during the period covered by such statement, and there may be deducted from the gross premiums any premiums returned to the insured on policies cancelled

where such policies have been issued during the term covered by the statement or premiums returned on policies cancelled where such original premiums have been previously taxed under this section; or if the insurance or indemnity is with a mutual company or association or individual or through an attorney for individuals, partnerships or corporations, or firm or Lloyds, such statement shall show the amount of insurance or indemnity and gross premium or deposit or payment made to secure such insurance or indemnity and from said gross premium or deposit or payment there may be deducted any premiums returned to the insured on policies cancelled where such policies have been issued during the term covered by the statement or premiums returned on policies cancelled where such original premiums have been previously taxed under this section. The insurance commissioner shall give notice to each person, company, association or corporation filing such return of the amount of his tax, computed at two and one-half per cent of the gross premium or deposit or payment made to secure the insurance or indemnity and said tax shall be payable to the treasurer of the state on or before the thirty-first day of December following; provided, however, that this section shall not be construed as extending to fraternal beneficiary associations, or members thereof; nor to mutual church insurance companies conducted for the protection of properties used in the service of religious denominations, or members thereof; nor to marine insurance; nor shall any provision of this section be construed as extending to insurance in unauthorized companies, written by special insurance brokers, under section one hundred twenty-five, of chapter fifty-three.

E.

Palmetto Fire Ins. Co. v. Beha, decision on rehearing not yet reported, July 14, 1926, United States Statutory Court for Southern District of N. Y.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

PALMETTO FIRE INSURANCE COMPANY,
Plaintiff,

against

JAMES A. BEHA, as Superintendent of Insurance of the State of New York,
Defendant.

Before: ROGERS, C.J., and HAND and KNOX, D.J.J.

CABELL, IGNATIUS & LOWN, Solicitors for Plaintiff; HARTWELL CABELL, Counsel.

ALBERT OTTINGER, Attorney-General of the State of New York, for the Defendant; CLAUDE T. DAWES and JOSEPH C. H. FLYNN, Deputies Attorney-General and CLARENCE C. FOWLER, Special Deputy Attorney-General.

AUGUSTUS N. HAND, District Judge:

After a re-argument of this case, we are not satisfied that our former decision was erroneous. Insurance may be taken out for whom it may concern. This has been common enough in marine risks, Hagan *v.* Scottish Union Ins. Co., 186 U. S. 423. The doctrine has been extended to inland fire risks, (Marquisee *v.* Hartford Fire Ins. Co., 198

Fed. 475), though the English Courts do not seem to have gone this far. Grover *v.* Matthews, (1910) 2 K. B. 401. It has been further applied to contracts for insurance on anticipated risks. Hooper *v.* Robinson, 98 U. S. 528; Hoffman v. Aetna Ins. Co., 32 N. Y. 405; also opinion of Judge Betts in Hanshaw *v.* Mutual Safety Ins. Co., Fed. Cas. No. 6387.

In the present case the purchasers of Chrysler cars could have had no insurable interest at the time the contract was made with the Palmetto Company in Michigan. Their interest would come into being whenever they might purchase cars and thereby come within the arrangement for insurance involved in the transaction. The question is whether the dealer by explaining the transaction to the purchaser forwarding his name with the amount paid for the car, in which the insurance premium had been taken into account in the charge, was effecting or procuring insurance in this State within the meaning of the statute. Under the decision of Lumbermen's Mutual Co. *v.* Meyer, 197 U. S. 407, it may be that the Palmetto Co. in adjusting losses will be doing business in the State of New York for the purpose of service of process and taxation, but no such course of business has been shown to have occurred. It is going farther, however, to say that the retailer is the agent of a company which neither directs nor pays him, nor has anything to do with him. The question is one of the construction of the New York Statute than of constitutional law, and we hold that the fact of acquiescence by the purchasers of Chrysler cars in a contract of sale which *ipso facto* gives them insurance protection under an agreement made in Michigan between the Chrysler Company and the plaintiff does not involve an effecting or procuring of insurance within the State of New York. The contract here may be construed as made in a foreign state for the benefit of a third party. It may be that the state could provide as a condition of obtaining a license that no licensee could insure

cars within the State of New York, but the statute does not cover such a case.

We adhere to our original decision. Judge Rogers because of illness has taken no part in this decision, though he presided at the time of the re-argument.

July 14, 1926.

AUGUSTUS N. HAND,
JNO. C. KNOX,
D.J.J.

F.

Bristol & Co. v. Railroad Commission of Wisconsin, not yet reported, Circuit Court for Dane County, decision of Hoppmann, J., July 19, 1926.

STATE OF WISCONSIN,

IN CIRCUIT COURT—FOR DANE COUNTY.

BRISTOL & CO.,
Plaintiff,

vs.

RAILROAD COMMISSION OF WISCONSIN,
Defendant.

(Case No. 1)

The above entitled action was tried to the Court without a jury. The plaintiff appeared by Richmond, Jackman, Wilkie & Toebaas, his attorneys; and the defendant appeared by T. L. McIntosh, representing the attorney

general of Wisconsin. After hearing the evidence and arguments of counsel, the Court makes the following as the findings of facts, conclusions of law, and orders to-wit:

Findings of Facts.

No. 1. That the plaintiff, Fred C. Bristol is an individual doing business under the name of "Bristol & Company", in the City of Chicago, Illinois, and is a resident of the State of Illinois.

No. 2. That the Kankakee Hostelry Company, an Illinois Corporation, executed a bond issue of $250,000 par value, on property located at Kankakee, Illinois. That the plaintiff underwrote all of said issue.

No. 3. That the principal and interest of approximately $115,000 of said issue was guaranteed by the *United Lloyds of America*. And that approximately $110,000 of said issue was so guaranteed by the FEDERAL SURETY COMPANY. That said contracts of guarantee were all fully executed and delivered in the State of Illinois.

No. 4. That neither said UNITED LLOYDS OF AMERICA nor said FEDERAL SURETY COMPANY are licensed to do a surety business in the State of Wisconsin.

No. 5. That plaintiff paid the premium on said guarantee in the State of Illinois. That all future premiums on said guarantee are payable in the State of Illinois.

No. 6. That the plaintiff made an absolute sale of the bonds in question in this action, in the State of Illinois to the Guaranteed Bond Company, located in Milwaukee, Wisconsin. That in effecting such sale neither the plaintiff nor the Guaranteed Bond Company, acted as the agent of either said UNITED LLOYDS OF AMERICA or said FEDERAL SURETY COMPANY. That each acted on their own behalf.

No. 7. That said Guaranteed Bond Company sold to citizens of the State of Wisconsin, approximately $17,700, par value, of said bonds, which were so guaranteed by the UNITED LLOYDS OF AMERICA. That said Guaranteed Bond Company sold to citizens of Wisconsin, approximately $97,300, par value, of said bonds which were so guaranteed by the said FEDERAL SURETY COMPANY. That in the sale of said bonds in Wisconsin neither the said Guaranteed Bond Company nor its agents or salesmen acted in any manner for or on behalf of said UNITED LLOYDS OF AMERICA or said FEDERAL SURETY COMPANY.

No. 8. That on the 17th day of November, 1925 the plaintiff applied to the defendant for a permit to sell said bonds in Wisconsin. That the defendant entered an order denying said application on the 17th day of February, 1926.

Conclusions of Law.

No. 1. That the sale and delivery, by said Guaranteed Bond Company, of said bonds in the State of Wisconsin including said guarantee does not constitute the doing of a guarantee or suretyship business in Wisconsin on the part of the said UNITED LLOYDS OF AMERICA or said FEDERAL SURETY COMPANY.

No. 2. That the order of the defendant dated the 17th day of February, 1926 denying to the plaintiff a permit to sell said bonds in Wisconsin for the reason stated in said order is in violation of law and void.

IT IS THEREFORE HEREBY ORDERED:

No. 1. That said order be and the same hereby is vacated and set aside as for naught.

No. 2. That the whole record in the above entitled action is hereby remanded to the defendant and that said

defendant issue the said permit applied for unless, said permit shall be denied by the defendant for reasons other than the basis upon which said permit was denied by the defendant, on the 17th day of February, 1926.

Dated July 19, 1926,

By the Court:

AUGUST C. HOPPMANN,
Judge.